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OA/ID Number: 19776

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Folder Title:

Gonzales, Elian [1]

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Clinton Presidential Records

Foreign Language Marker

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Foreign Language Marker

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Language: Spanish

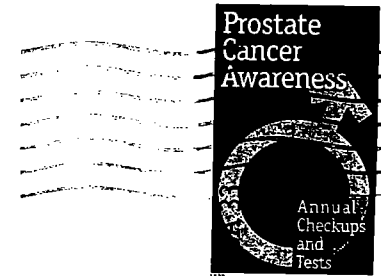
Folder Title Gonzalez, Elian [1]

OA/ID: 19776

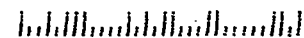


POR DINERO BAILA EL MONO

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MARIA ECHAVEZ TI
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SECRETARY.
THE WHITE HOUSE
WASHINGTON, DC 20500



Mario - ELIAN FILE



one copy

FAX TRANSMISSION

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To: Ms. Maureen Shea **Date:** May 2, 2000
Fax #: 202-456-6218 **Pages:** 5, including cover sheet
From: Maria Diaz
Subject: Elian Gonzalez

Dear Ms. Shea,

Enclosed please find Cardinal Law's Boston Globe op ed piece on Elian Gonzalez as well as a copy of a statement by Most Reverend Nicholas DiMarzio.

A great deal has been made about the complexity of the case of Elian Gonzalez. Indeed, there is a convergence of many factors which have been woven together in the endless analyses and legal actions which his case have inspired.

For many, the case turns on a decision concerning the intrinsic superiority of a democratic system of government over a communist inspired dictatorship, or vice versa, depending on where you live and how you think. In either case, Elian becomes the latest in a series of incidents which will continue as long as the present relationship between the two nations is maintained.

Enough ink has been spilled on the complexity of the case. For me, it is rather the simplicity of the case which is so overwhelming. It is not necessary to wait for a state, or federal or even a Supreme Court decision to inform us where a young boy who has lost his mother under the most tragic of circumstances should be placed. Absent clear evidence of the father's unsuitability as a parent, Elian belongs with his father. He needs the reassuring embrace of his father's love to help him begin to deal with the terrible loss he has sustained in his mother's death.

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It is true that Disney World is much farther from Cuba than the map records. It is also true that chocolate milk is not readily available to little Cuban children. It might be argued that Disney World could be brought closer and chocolate milk could be made more readily available if the United States would lift the embargo.

Presuming that this will not happen immediately, it should be said that weighed in a balance, the natural bond between a father and son is of far greater value than a visit with Mickey or a glass of chocolate milk or even the superiority of a system of government.

Over the past ten years or more I have had occasion to visit Cuba many times. Those visits certainly do not make me an expert on that Island nation. I am under no illusions about the regime's shortcomings.

At the same time, I have come to know families in Cuba. I have seen happy children in a loving relationship with their parents. As a matter of fact, a better future for Cuba, as for any nation, is rooted in the family.

Perhaps Elian will someday choose to come to this country. Perhaps his father will also make that choice. Perhaps Elian will stay in Cuba and help to build a better future for his country, and help to restore the relationship which should exist between neighboring states.

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In the meantime, however, we should let the circus end, and allow the return of Elian to his father so that they might mourn together all that has been, and allow them the privacy and the time to get on with their lives.

Bernard Cardinal Law
Archbishop of Boston
April 18, 2000

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NCCB Committee on Migration

c/o Migration and Refugee Services

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Statement by Most Reverend Nicholas DiMarzio, Chairman, Committee on Migration of the National Conference of Catholic Bishops on the Situation of Elian Gonzalez

April 12, 2000

The Catholic Bishops of the United States have followed closely the dispute surrounding the case of Elian Gonzalez. People of good will can and do have different opinions on how to resolve this troubling case, but we must acknowledge that most of us are not in a position to know, with moral certainty, all the facts necessary to decide this case in a way that respects parental rights and the best interests of this child. The fact that Elian's parents were divorced, the complicated relations between the United States and the communist government of Cuba, and questions as to the father's freedom in expressing his wishes as to the child's future, all have made this a very difficult situation.

The resolution of this emotionally charged case has fallen to the INS and the federal courts, which are charged under our system of law with making these difficult decisions, giving due regard to the natural rights and responsibilities of parents.

We urge that all members of Elian's family, here and in Cuba, work toward a peaceful resolution of this situation for to do so would be to serve the best interests of this child. And, we urge all interested parties, here and in Cuba, to respect the rule of law and to avoid exacerbating and further politicizing an already tragic situation.

Besides the death of a mother under horrendous circumstances, a family has been broken apart. We pray for healing, both in Elian's family and in the families of all who have suffered division because of social, political, or economic forces beyond their control.

Each year, thousands of unaccompanied minors enter the United States. The facts surrounding the unfortunate plight of Elian Gonzalez should convince us all of the necessity of working for just solutions to the breakup of families caused by war, civil strife or poverty that rob children of their right to be raised by loving parents in conditions worthy of human life.

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Most Reverend Joseph Younan

Highlights

- O The boy belonged with his father. Today he is with his father.**
- O The boy was living in the middle of a media circus. Now he is living in the middle of a loving family, safely away from damaging scrutiny and manipulation.**
- O The relatives had no legal authority to hold Elian. They had a legal obligation to turn him over. They repeatedly failed to do so.**
- O The return of Elian to his father was done in a way that posed the least risk to the lives of the boy, the relatives, and the law enforcement men and women involved.**
- O The methods used were made necessary by the failure of the relatives to obey the law, their threatening public statements, and intelligence information suggesting that guns might be on the premises or in the vicinity.**
- O The government gave the relatives every opportunity to comply with the law in a calm and peaceful manner. The government bent over backwards to be patient, deliberate and thorough. The successful effort to reunite Elian and his father occurred only after it was clear that the relatives were continuing to refuse to agree to turn him over voluntarily.**

Highlights

1. **The government had a search warrant to enter the home and take Elian Gonzalez away to be reunited with his father.**

Statements by allies of the relatives in Miami, including Rep. Tom DeLay, that the government had no warrant to enter the home are false.

The search warrant was signed Friday evening by a U.S. Magistrate judge from the Federal court in Miami.

2. **The relatives in Miami did not meet the Attorney General's deadline, and never agreed to turn the child over to federal authorities to be reunited with his father.**

The relatives had signed a document that stated "We understand that you have transferred temporary custody of Elian to his father...." But nowhere in that document did they commit to turning Elian over.

The relatives have, in fact, given very conflicting signals about what they would do with Elian over recent weeks. For example, great-uncle Lazaro Gonzalez was quoted on April 13 as saying, "The kid will have to be picked up by force."

3. **The government used appropriate measures to enter the home and remove the child.**

From start to finish, the government entered the home and removed Elian Gonzalez in less than three minutes.

Officials had to be prepared for the possibility that relatives or their allies might have guns on the premises or in the area. Reportedly, someone providing security for the relatives had a permit for a concealed weapon and was seen in and around the home with a gun strapped to his ankle. In addition, news reports say cousin Marisleysis Gonzalez made this troubling comment to members of the INS Community Relations Service on Thursday: "You think we just have cameras in the house? If people try to come in, they could be hurt." News reports also say officials had two other indications that guns might be in or near the property, including one case in which a woman reportedly showed a gun in her purse, and intelligence reports that weapons were being stockpiled in an adjacent house.

The procedures followed by the government were supported today by the Federal Law Enforcement Officers Association, which issued a statement sharply critical of those who have questioned the actions of federal agents.

4. The government had the legal authority to reunite the child with his father.

The U.S. District Court last month had ruled in favor of the government, affirming that the Attorney General had discretion to handle this as an immigration matter. The 11th Circuit's recent order did not stay or overturn that decision. The order simply prevents removal of Elian Gonzalez from the United States. It did not prevent the government from reuniting the child with his father.

In addition, earlier this month a state court had thrown out an effort by the Miami relatives to seek custody of Elian.

Support for Operation Reunion

April 25, 2000

The INS and Justice Department under the leadership of Attorney General Janet Reno have worked tirelessly and patiently for over three months for a solution that would peacefully reunite Elian Gonzalez with his father, Juan Miguel Gonzalez. Unfortunately, on April 22, it became clear that Elian's Miami relatives had no intention of obeying the lawful order to reunite Elian with his father. INS agents with a warrant removed Elian from the Miami relatives' home. Since then, law enforcement experts have praised the manner in which the INS carried out the operation, and the action has been praised as a tough decision that was in Elian's best interests. Here are some examples of praise for the operation.

Support for Law Enforcement Tactics

- **William Bratton, former New York and Boston police commissioner: *INS acted appropriately***
"By and large the federal government acted appropriately and decisively Saturday to uphold the law. The tragedy of this incident is that it required such an assertive action and show of force to enforce the law. For days, Elian's Little Havana relatives, no matter how emotionally involved, had kept the government at arm's length. Meanwhile, their "advisers" and political activists had shamelessly exploited Elian's tragic situation for their own political purposes by encouraging the family to flout the law and its intention to reunite Elian with his father." [ABPNews.com, 4/24/00]
- **Sen. Arlen Specter: *Law enforcement had to protect themselves***
"Well, I think once they went in, absolutely they had to be able to protect themselves. And regrettably in this case, Judy, you had everybody saying just about everything." [Sen. Arlen Specter, CNN Inside Politics, 4/24/00]
- **Richard Gallo, President, Federal Law Enforcement Officers Assn: *INS used necessary force***
"You don't wear tutus and carry feather dusters. Intelligence showed there were people around the house with lawfully obtained concealed weapon permits." Gallo said heavily armed agents batter down doors every day executing warrants, but it is rare that they are captured from behind the scenes or broadcast on national television like this one was." [ABPNews.com, 4/24/00]
- **Stephen Davis, Former NYPD: *Accomplished objectives without incident***
"The bottom line is it worked and nobody got hurt... Their objective is to free the subject and try to minimize injury. And in that regard, they accomplished both. ... 'You're preparing for the worst-case scenario, you want to go in as quickly as possible.'" [Daily News, 4/24/00]
- **John P. Julian, former Miami police officer: *INS had to be prepared for guns***
"Florida is a place where most people have a right to carry a concealed firearm. If the agents had been unarmed -- and one had been shot -- the public would have asked, 'Why weren't they armed?'" [New York Times, 4/24/00]
- **Kurt Wurzberger, Security and Intelligence Specialist: *Photo shows proper procedure***
"Well, I see proper procedure. I see the agent coming through the door, identifying where Elian is."

He--his weapon is not pointed directly at him. It--it's at the ready, which is tactically correct. His finger is not on the trigger. ... He was identifying Elian and, of course, as you noticed the armed personnel did not bring him out of that house. They had other people bring him out that were in soft uniforms and were not armed." [CBS News, 4/24/00]

- **Woody Johnson, Former FBI Agent: Necessary defense**

"What if somebody in that house had been armed, and they had -- either with a knife or a gun -- and they had attacked one of the officers? I mean, he may have to defend himself with that. ... So you can't guarantee to the attorney general or anyone else in authority that it's going to be clean and nobody is going to get hurt and we're going to be out of there." [CNN/TIME, 4/23/00]

- **Steve Kiraly, former Miami detective: Elian was never in danger**

Kiraly acknowledged that the photograph of an agent pointing the gun near Elian was jarring, saying the image made it easy for people to second-guess the wisdom of the operation. But he added: *"Let's be serious. The kid was never in danger. The only reason they had guns is they were told there were guns stockpiled in the neighborhood or the house. They did the proper thing."* [New York Times, 4/24/00]

Medical professionals support reuniting Elian Gonzalez with his father

- **Dr. Elissa Benedek, Clinical Psychologist: Elian will recover**

"As a psychiatrist who's seen youngsters who've had a similar, although not an exact experience like this, kids are pretty resilient. And I would expect that for the first few minutes, it was traumatic for Elian, but he'll get over this. He may have a nightmare or two but he's now reunited with his father, which is probably the--the paramount issue to consider." [CBS News, 4/24/00]

- **Dr. Gustavo Cadavid, U.S. Public Health Service: Elian is very happy**

"Yes, he was scared, but he is very resilient. And it was demonstrated during the trip . . . The child who was sad initially, gets off the airplane three hours later happy, moving, talking, hugging his father." [MSNBC, 4/24/00]

- **Dr. Frank Farley, former President, American Psychological Assn: Things look good for Elian**

"One of the most important things Elian needs is time with his family, time to spend in their own way, not directed by officials or by 'experts' like myself, . . . And there should be no TV coverage ... "I am really impressed by this boy . . . He had those 48 hours in the water, with the boat sinking and his mother dying. You can't get more traumatic than that. The three minutes (when agents raided Lazaro Gonzalez's house) pales by comparison. So far, things look very good for him. Now he and his father need some quietude, some respite." [USA Today, 4/24/00]

- **Dr. Paul Buittenweiser, Harvard child psychiatrist: Returning Elian to his father was important**

"I think the swiftness and the act of getting him back to his father quickly were very important." [Boston Herald, 4/23/00]

Comments on critics of Operation Reunion

- Ft Lauderdale Sun- Sentinel: Rep. Tom "DeLay's Comment was Negligent at Best"**
 U.S. House Majority Whip Tom DeLay of Texas as gone so far as to accuse the federal government of conducting the Saturday morning raid without court authorization. In fact, federal agents had a warrant and were operating completely within the law. DeLay's comment was negligent at best. At worst, it contained carefully calculated disinformation made for political gain. U.S. Rep. Lincoln Diaz-Balart, R-Miami, has made statements bordering on the irrational. Soon after a photo of a smiling Elian in his father's arms appeared in newspapers and on TV, people were insisting it was a fake. Then they began claiming Elian looked so joyful because he had been drugged and brainwashed, an idea endorsed by Diaz-Balart. [Editorial, Ft Lauderdale Sun-Sentinel, 4/25/00]
- Jacksonville Florida Times-Union: Applauds effort to reunite Elian and his father**
 The raid was carried out to reunite father with son, and published photographs indicate the boy is delighted to be back in the care of his only surviving parent. [Editorial, Jacksonville Florida Times-Union, 4/25/00]
- St. Petersburg Times: "Federal Agents Had Every Right To Be Prepared"**
 It is outrageous to suggest, as some elected officials have, that federal agents would aim a gun at the child they were there to reunite with his father. It would have been irresponsible for Reno to have sent unarmed federal agents into the house not knowing what they might face. [Editorial, St. Petersburg Times, 4/25/00]
- Orlando Sentinel: Raid could not be avoided**
 The agents were in and out of the house in less than five minutes. No one fired any shots. Elian was not harmed, and injuries to bystanders were not serious. But could such a raid have been avoided? Absolutely -- not by the Justice Department but by people so consumed by their hatred for Cuban President Fidel Castro that they would subject a small boy to such trauma rather than let him return to his father. They allowed that political issue to overshadow a very special and far more important aspect of this case -- the bond between a father and his beloved son. [Editorial, Orlando Sentinel, 4/25/00]
- Los Angeles Times: "Reno Made a Hard Decision and Made it Stick"**
 Elián González is with his father today, as he should have been long ago. Attorney General Janet Reno made a difficult decision in ordering him removed from his Miami relatives' home by armed agents, but she had been properly cautious - even overly cautious - in moving ahead on the legal front and in the police action that took place Saturday morning. Now her office should act promptly in court to settle the issue of the child's status. [Editorial, Los Angeles Times, 4/23/00]
- St. Louis Post Dispatch: "Outlandish Tales of Conspiracies and Jack-Booted Terror"**
 Unfortunately, Elian's happiness at seeing his father has so enflamed anti-Castro -- and anti-Clinton -- partisans that they're spinning outlandish tales of conspiracies and jack-booted terror. Republican leaders, such as Rep. Tom DeLay of Texas, should be ashamed of themselves. [Editorial, St. Louis Post Dispatch, 4/25/00]
- Chicago Tribune: Republican's "Gross Overreaction ... Suggests Terrible Judgment"**

Reasonable people can differ on precisely how the government should have restored the 6-year-old Cuban boy to his father--who by every legal precedent has the right to custody of his son and full authority to make decisions about the boy's future. But the gross overreaction of many important Republicans suggests terrible judgment, out-of-control hatred of Bill Clinton, or shameless pandering to their most right-wing supporters--if not all three. [Editorial, Chicago Tribune, 4/25/00]

- **Boston Globe: *"A Model of Efficient Law Enforcement, Guided by Due Process"***

A few miles from his temporary home at Andrews Air Force Base, Senator Bob Smith of New Hampshire, Representative Tom DeLay of Texas, both Republicans, and the relatives were treating the raid to return Elian as though it were a Nazi SS operation. Yet federal agents had a warrant, were enforcing US law, and entered the house with the proper force to ensure minimal resistance and injury. It was a model of efficient law enforcement, guided by due process. The raid was necessary because the Gonzalez relatives in Miami, refusing to return the boy, made him into a symbol of resistance to Fidel Castro. Elian printed his name on an application for asylum and was put in front of a video camera to say that he did not want to go back to Cuba. The relatives treated the boy like a political prop. [Editorial, Boston Globe, 4/25/00]

- **Baltimore Sun: *Raid Carried Out "Speedily" with "Professional Skill"***

Though the raid on Lazaro Gonzalez's Miami house is being criticized, there is no dispute about the professional skill with which it was carried out - successfully and speedily. Nor is there disagreement that it followed legal form, including a search warrant. ... A show of force was necessary. Hardheads in the Cuban-American community had organized mob behavior to obstruct the law and keep Elian imprisoned in a goldfish bowl. The Miami family was negotiating in bad faith. [Editorial, Baltimore Sun, 4/25/00]

- **Charlotte Observer: *"The raid was concluded swiftly, decisively and without harm"***

The raid was concluded swiftly, decisively and without harm. Eight agents entered and left the house within three minutes, carrying the youngster in a blanket. Imagine the outcry if decisions and events had gone otherwise - if ill-equipped agents had been overcome or even wounded by armed opponents. The possibility of forcible resistance was made plausible by the behavior of the Miami relatives who've been keeping the boy since his rescue. [Editorial, Charlotte Observer, 4/25/00]

- **Christian Science Monitor: *US Government "nurturing parental love"***

The federal raid to rescue Elian Gonzalez was an unfortunate but necessary action to show where the United States stands on the supreme social importance of nurturing parental love. With the father's backing, Attorney General Janet Reno made the correct legal call to prevent the relatives from using the boy for their own interests and to order a rescue. [Editorial, Christian Science Monitor, 4/24/00]

- **Denver Post: *"Agents were Right to Come Prepared for Violent Resistance"***

In three dramatic pre-dawn minutes last weekend, federal agents rescued Elian Gonzalez from an increasingly tense and traumatic situation and sent him on the way to be reunited with his loving father. Though Elian's Miami relatives could have ended this confrontation any time in the previous 15 days simply by obeying the law, they are now denouncing Attorney General Janet Reno for having sent armed agents to retrieve the boy. But the agents were right to come prepared for violent resistance. [Editorial, Denver Post, 4/25/00]

- **Fort Worth Star-Telegram: *Tom Delay “disgraced himself”***
 DeLay in particular disgraced himself when he erroneously said that the Immigration and Naturalization Service had no warrant when agents entered the house to take the boy. There may have been miscalls in this, the most over-covered story of the year, but to think for one minute that law enforcement officials would forgo the most basic requirement in such an operation is ludicrous. [Editorial, Fort Worth Star-Telegram, 4/25/00]
- **Minneapolis Star Tribune: *“Elian Gonzalez Deserved to be Reunited with His Father”***
 The great majority of Americans understand that Elian Gonzalez deserved to be reunited with his father as quickly and safely as possible. Reno, with Clinton's support, has done just that. [Editorial, Minneapolis Star Tribune, 4/25/00]
- **Sacramento Bee: *Excessive Force “Claims are Questionable”***
 Yet the action was justified. Attorney General Janet Reno moved only after exhausting efforts to resolve the matter without incident, a full month after a federal judge ordered the Miami relatives to relinquish custody. Now, they claim that federal marshals and immigration agents were unduly aggressive inside the house; but those claims are questionable, and in any case the agents had reason for concern about possible violent resistance. [Editorial, Sacramento Bee, 4/25/00]
- **San Antonio Express-News: *Operation Reunions was “Only Option Left”***
 But in the end, this was the only option left to Attorney General Janet Reno and the federal government. ... Fortunately, the raid was swift, without shots fired. No one was seriously injured. [Editorial, San Antonio Express-News, 4/24/00]
- **Seattle Times: *Overwhelming Strength to Protect the Boy, the Officers and the Crowd***
 What the raid had going for it was overwhelming strength to protect the boy, the officers and the crowd, and swiftly and safely accomplish the mission. [Editorial, Seattle Times, 4/25/00]
- **Providence Journal-Bulletin: *“U.S. Atty. Gen. Janet Reno Acted Appropriately”***
 U.S. Atty. Gen. Janet Reno acted appropriately in ordering federal agents to take Elian. Miss Reno was simply enforcing the law. Given the fear that Lazaro Gonzn's great-uncle, and/or other members of the family had guns, and the incendiary atmosphere in Miami's Little Havana, the attorney general had little recourse but to act suddenly and decisively. [Editorial, Providence Journal-Bulletin, 4/24/00]
- **Norfolk Virginian-Pilot: *Raid Maximized Surprise while Minimizing Violence***
 To argue in effect that political policy should override both the rule of law and the sanctity of family is to show far more affinity with tyranny than Attorney General Janet Reno did in maintaining restraint for weeks and making persistent efforts to negotiate a voluntary solution that she clearly preferred over the use of force. Yes, the raid was traumatic and unfortunate. But it was carried off in a way that maximized the element of surprise while minimizing the possibility of violence. [Editorial, Norfolk Virginian-Pilot, 4/24/00]

CONTEXT: *Several visitors are arriving from Cuba to spend time with Elian Gonzalez and his family. Yesterday, a kindergarten teacher and Elian's 11-year-old cousin arrived in DC, and will head to the Wye River Plantation this morning. This afternoon, four of Elian's schoolmates, each accompanied by an adult relative, will arrive at Dulles to spend two weeks with Elian and his family. Other visas requests remain pending.*

In court action in the 11th Circuit, the Miami relatives have sought an injunction, seeking to restrict Elian's meetings with Cuban officials, psychologists, and physicians, grant access to him by the physician treating him in Miami and by "his" lawyers, and appoint an independent official to decide with whom Elian should meet. They also asked the court to construe their current injunction to prevent Elian from being taken to any place with diplomatic immunity. On April 19, the Federal Court of Appeals for the 11th Circuit in Atlanta issued an injunction, preventing Elian Gonzalez's removal from the U.S. pending its decision on the Miami relatives' appeal, which is set for oral argument on May 11. While the court suggested that a 6-year-old might have the right to apply for asylum against the wishes of a parent, this ruling is preliminary and does not necessarily predict the outcome of the full appeal.

Juan Miguel Gonzalez, Elian's father, filed a motion with the 11th Circuit yesterday, asking that he be declared the sole person with legal authority to speak for the child in the legal proceedings in federal court.

Are officials from Cuban Interests Section staying at Wye with Elian?

- No Cuban officials are staying at Wye with Elian and his family. They have visited, but are not staying there.

Will you issue visas to the others who have requested them, including Cuban physicians?

- We have issued visas to four of Elian's schoolmates, each accompanied by a parent. They are expected to arrive this afternoon and will visit with Elian and his family for up to two weeks. Elian's 11-year-old cousin and Elian's former kindergarten teacher, who were previously granted visas, arrived last night. The remaining visa requests are under review.

[ONLY IF ASKED] Is a Cuban pediatrician or physician coming to the US?

- A visa was previously granted to the Gonzalez family pediatrician at the same time as visas were granted to Juan Miguel Gonzalez and his wife. We are not certain of the pediatrician's travel plans at this point.

Cuban television has shown images of a home and school where Elian would live for several months after his return. Some have called this a reeducation camp. Does this give you cause to reconsider sending Elian back to Cuba?

- As the Attorney General has said, the focus of this case is on the role of the boy's father in raising him. This father has been very involved in raising his son, and we are glad that they have been reunited so that he can continue to do so.

What assurances are you seeking from the Cuban government -- should Elian return to Cuba -- that he would not be used as propaganda, would not be placed in a special school, and would return to his "normal" life?

- Elian Gonzalez cannot return to Cuba until the federal court injunction is lifted.
- From the beginning, we have tried to de-politicize this case, and we have spoken to Cuban officials in Havana, Geneva, and Washington about the need to do so.
- Officials from the State Department met with representatives of the Cuban Interests Section this week in Washington and voiced concern on how Elian would be treated in the event he returns to Cuba. These conversations have been constructive. We will continue to discuss with Cuban officials Elian's treatment should he return to Cuba.

Do you think the father really wants to return to Cuba, or is he unable or unwilling to speak freely?

- Under our law, the father is free to apply for asylum if he wishes. It's our understanding that he has said clearly that he wants to return to his country.
- He has had numerous meetings alone with his attorney and also met with the Attorney General and INS Commissioner without any Cuban officials present.

[IF ASKED] The 11th Circuit's ruling seems to indicate that INS is wrong on the law, and that even a six-year-old has the right to apply for asylum against the wishes of a parent. Are you concerned that Justice may lose the appeal?

- This was a preliminary ruling on a request for an injunction to prevent the boy's removal from the U.S. while the 11th Circuit considers the appeal. The court has not yet considered all the briefs in this case or heard oral argument, so I think we cannot prejudge the result. Beyond that, we will not comment on pending litigation.

Why are you trying to send Elian back to Cuba while at the same time condemning the deplorable human rights conditions in Cuba?

- The Elian Gonzalez case is about the bond between a child and his father. This child needs to be reunited with his father because that is what the law – and fundamental principles of family – require.
- We simply cannot take the position that because the government of a country denies its citizens human rights, parent in that country must lose their right to raise their child.

[IF ASKED] What's your reaction to the federal suit filed by the Miami relatives last week, alleging that the child's return to Cuba is barred by several international human rights treaties?

- We will not comment on pending litigation.

What is the US government doing about the altercation outside the Cuban Interests Section in Washington?

- The matter is being investigated by the Washington DC police department.

Why did you wait so long to act in reuniting Elian with his father? In retrospect, do you think the government should have taken steps earlier to resolve this case? Do you think the Attorney General was too hesitant?

- The Justice Department followed a deliberate and careful process in order to reunite this child with his father safely and with as little disruption as possible. It is very unfortunate that Elian's Miami relatives made these actions necessary by their intransigence in handing the boy over to his father voluntarily.

What is the White House's role in the matter at this juncture?

- The Justice Department and State Department continue to play their respective leading roles in this matter. Of course, we continue to be in close touch with Justice and State on this important issue.

How do you respond to allegations that you are using this case as a tool to improve relations with Cuba?

- Our only objective is to see that the INS decision in this case is carried out in accordance with the law.

Eliam



Victoria L. Valentine
04/25/2000 11:46:19 AM

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James E. Kennedy

04/25/2000 11:42:22 AM

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To: Victoria L. Valentine/WHO/EOP@EOP

cc:

Subject: more

Highlights

- 1. The government had a search warrant to enter the home and take Elian Gonzalez away to be reunited with his father.**

Statements by allies of the relatives in Miami, including Rep. Tom DeLay, that the government had no warrant to enter the home are false.

The search warrant was signed Friday evening by a U.S. Magistrate judge from the Federal court in Miami.

- 2. The relatives in Miami did not meet the Attorney General's deadline, and never agreed to turn the child over to federal authorities to be reunited with his father.**

The relatives had signed a document that stated "We understand that you have transferred temporary custody of Elian to his father...." But nowhere in that document did they commit to turning Elian over.

The relatives have, in fact, given very conflicting signals about what they would do with Elian over recent weeks. For example, great-uncle Lazaro Gonzalez was quoted

on April 13 as saying, "The kid will have to be picked up by force."

3. The government used appropriate measures to enter the home and remove the child.

From start to finish, the government entered the home and removed Elian Gonzalez in less than three minutes.

Officials had to be prepared for the possibility that relatives or their allies might have guns on the premises or in the area. Reportedly, someone providing security for the relatives had a permit for a concealed weapon and was seen in and around the home with a gun strapped to his ankle. In addition, news reports say cousin Marisleysis Gonzalez made this troubling comment to members of the INS Community Relations Service on Thursday: ``You think we just have cameras in the house? If people try to come in, they could be hurt.' ' News reports also say officials had two other indications that guns might be in or near the property, including one case in which a woman reportedly showed a gun in her purse, and intelligence reports that weapons were being stockpiled in an adjacent house.

The procedures followed by the government were supported today by the Federal Law Enforcement Officers Association, which issued a statement sharply critical of those who have questioned the actions of federal agents.

4. The government had the legal authority to reunite the child with his father.

The U.S. District Court last month had ruled in favor of the government, affirming that the Attorney General had discretion to handle this as an immigration matter. The 11th Circuit's recent order did not stay or overturn that decision. The order simply prevents removal of Elian Gonzalez from the United States. It did not prevent the government from reuniting the child with his father.

In addition, earlier this month a state court had thrown out an effort by the Miami relatives to seek custody of Elian.



Podesta/Mama - unimul to Secrecy

DEPARTMENT OF ENERGY
Washington, DC 20585

FR

OFFICE OF THE SI

MEMO TO THE PRESIDENT

FROM: Bill Richardson

Subject: Post-Elian strategy for you: A time to heal wounds

DATE: April 23, 2000

4-25-00

Now that Elian has been re-united with his father, I believe your objectives should be to:

- 1) convey to the nation that we all need to start a healing process from this traumatic episode that has riveted the country for the past five months;
- 2) state that Elian and his father need some space, time, and privacy to get re-acquainted and should thus be left alone;
- 3) start a healing process between the administration and the Cuban-American community;
- 4) continue to show your support for Reno's decision but you yourself stay above the harsh partisan attacks that will commence immediately;
- 5) after a brief interval (a few days), try to facilitate a reconciliation between Elian's father and the Miami relatives;
- 6) dispel the erroneous view that Gregory Craig has been calling the shots by aggressively backgrounding the press and others about the true facts;
- 7) develop an understanding with the Cuban government that guarantees Elian and his Miami relatives visitation and family reunification rights assuming Elian's asylum application is denied and he eventually returns to Cuba with his father; and,
- 8) use the Elian incident to engage the Cuban government in broader immigration and family re-unification issues without signaling, intending, or suggesting an easing of the U.S.-Cuban bilateral relationship.

Next steps

1) As a start, allow me and other high level Hispanic appointees to invite the Miami relatives currently in Washington to meet with us and let them vent and air their grievances. Such a meeting would show that we are reaching out and not hunkering down. Additionally, dispatch me, Caldera, Echaveste, Alvarez, and others to meet with Cuban American leaders in Miami and New Jersey like Menendez, Penelas, and others et al to start a dialogue. Involve Podesta in these "reaching out" meetings as he conveys strength and is perceived as speaking for you.

2) I strongly urge that you invite a dozen or so Cuban American leaders (not elected officials) from a carefully compiled list (that would also include Cuban American appointees) for an evening meeting at the White House (perhaps in the solarium) to show that you too are listening and reaching out. A list could

Page 2

be assembled that includes non-political types such as business and education leaders, human rights types, psychologists, and others who might be constructive in their views as to how to bridge current differences.

3) In press availabilities by yourself or Lockhart, continue to voice your support for Reno's decision by stressing the legal and humanitarian justification for the decision and the need to move on and heal differences. Let Holder and Meissner (who were most effective on the Sunday talk shows) take the lead and be the main spokesmen for the administration on the issue.

4) Authorize a low key dialogue with Castro (currently well disposed towards us) to guarantee certain rights and privileges for Elian and his Miami relatives that permit flexible visitation and family reunification understandings before the courts rule on the asylum issue.

Additionally, certain agreements should also be pursued with Castro that the child would not be exploited once he returned and that he would be permitted to live a normal life in Cuba and be able to visit his relatives in Florida and vice versa. Senator Bob Graham in a Sunday talk show interview with Cokie Roberts said that you had agreed to this approach three weeks ago in a meeting with him. Given my previous pre-administration dealings with Castro, I believe I could achieve these objectives.

5) Use the Elian incident to jump-start immigration and family re-unification negotiations with Cuba that might involve (as Bernie Aronson suggested in a Washington Post Sunday Op-Ed) the administration allowing Cuban Americans to visit family members on the island on a regular basis rather than for emergencies only (current policy) and to increase financial remittances from Miami to Cuba. Consideration should also be given to allow more Cubans on the island to obtain temporary visas to visit family members in the U.S.

This strategy is not without risks or charges that we are engaged in spin or damage control, politics, or pandering. Nonetheless, I firmly believe that these initiatives are the right thing to do at this very crucial juncture. The views of the Miami relatives and Cuban Americans are deeply felt and sincere and you are their President too. So far, your non-political and low key approach to this crisis has worked. It is my view that by taking these steps, your already secure legacy as a healer and bridge builder will be enhanced and a much needed reconciliation process will start.

cc: John Podesta

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J

Office of the Deputy Attorney General
U. S. Department of Justice

Eliar

The Deputy Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMISSION COVER SHEET

DATE: 3/24/00

TO: Beth Nolan
White House Counsel
456-2632 (phone)
456-6279 (fax)

FROM: Eric H. Holder, Jr.

OFFICE

PHONE #: 202-514-2101

FACSIMILE

PHONE #: 202-514-0467

COVER PLUS 6 PAGE(S)

REMARKS:

Please deliver to Beth ASAP.

UNITED STATES ATTORNEYS OFFICE
THOMAS E. SCOTT
UNITED STATES ATTORNEY
FACSIMILE COVER SHEET

No. of pages: _____

Date: _____

To: _____

Eric Holder

Phone #: _____

514-2101

Fax #: _____

From: _____

Phone #: _____

Fax #: _____

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___ STANDARD (Please respond within 1-3 working days)
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ADDITIONAL COMMENTS:

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MAIN FAX: (305) 530-7057

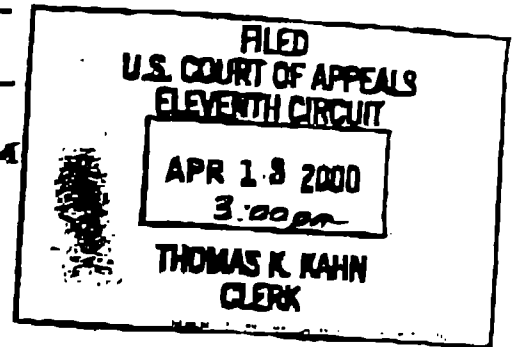
UNITED STATES ATTORNEYS-FT.L.
300 E. BROWARD BLVD. - 7th FLOOR
FT. LAUDERDALE, FL 33304
MAIN: (954) 356-7333
MAIN FAX: (954) 356-7336

UNITED STATES ATTORNEYS-WPB
300 AUSTRALIAN AVENUE - SUITE 400
WEST PALM BEACH, FL 33401
MAIN: (561) 820-8711
MAIN FAX: (561) 820-8777

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-11424-D

D. C. Docket No. 00-206-CV-KM



ELIAN GONZALEZ, a minor, by and through,
LAZARO GONZALEZ, as next friend, or,
alternatively, as temporary legal custodian,

Plaintiffs,

JANET RENO, Attorney General of the United States;
DORIS MEISSNER, Commissioner, United States
Immigration and Naturalization Service;
ROBERT WALLIS, District Director,
United States Immigration and Naturalization Service;
**UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE**; and **UNITED
STATES DEPARTMENT OF JUSTICE**,

Defendants.

Appeal from the United States District Court
for the Southern District of Florida

ORDER

Plaintiff-Appellant, Elian Gonzalez, by and through his next friend, Lazaro Gonzalez, has filed a motion for an injunction to preclude Plaintiff's physical removal from the jurisdiction of the United States during the pendency of this appeal. In ordinary cases, a motion for injunction pending appeal will not be granted except after consideration by a panel of three judges of this Court. Fed. R. App. P. 8(a)(2)(D). But where time may be short, a single judge of this Court may grant a temporary injunction, preserving the status quo until a panel of three judges can more fully consider the motion for injunction pending appeal. See Fed. R. App. P. 8(a)(2)(D); see also Fed. R. App. P. 27(c); 11th Cir. Local R. 27-1(d)(7).

Consideration of Plaintiff's motion for injunction pending appeal requires examining four factors: (1) whether Plaintiff is likely to succeed on the merits of his appeal; (2) whether Plaintiff

will suffer irreparable injury if the injunction is not granted; (3) whether the injunction, if granted, would substantially harm other parties; and (4) whether the injunction, if granted, would harm the public interest. In re Federal Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). Plaintiff, however, need not necessarily show that he probably will succeed on the merits of his appeal; "Instead, [Plaintiff] need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay." Ruiz v. Estelle, 650 F.2d 555, 563 (5th Cir. 1981); see also United States v. Hamilton, 963 F.2d 322, 323 (11th Cir. 1992); Garcia-Mir v. Meza, 781 F.2d 1450, 1453 (11th Cir. 1986).

I understand that Plaintiff is subject to being placed under the physical control, custody, and care of the Immigration and Naturalization Service at any time after 2 o'clock this afternoon. Because of the possibility that Plaintiff might be removed from this country before the motion for injunction

pending appeal can be determined by a panel of three judges, I have decided to act alone but only until panel can act. I have considered each of the four elements, particularly irreparable injury and likelihood of success. For now, at least—in the light of Plaintiff's motion and Plaintiff's brief on appeal, already filed with this Court—it seems that Plaintiff probably has demonstrated that he is entitled to an injunction prohibiting his removal from the United States during the pendency of this appeal.

THEREFORE,

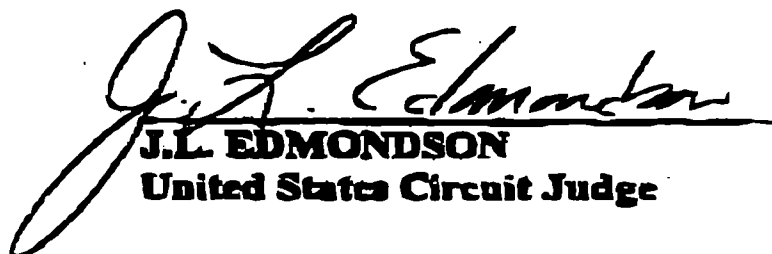
- (1) Plaintiff, Elian Gonzalez, is ENJOINED from leaving the United States;**
- (2) Any and all persons acting for, on behalf of, or in concert with Plaintiff, Elian Gonzalez, are ENJOINED from aiding or assisting the removal of Plaintiff from the United States; and**
- (3) All officers and agents of the United States (including, but not limited to, officers and agents of the United States**

**Department of Justice) are ENJOINED to take such
lawful and reasonable precautions and actions as are
necessary to prevent the removal of Plaintiff from the
United States,**

until further Order of this Court.

**This temporary Order is entered without the Court's having
received a response from Defendants-Appellees. Defendants shall
have until 9:30 a.m. Friday, 14 April, to file a response to Plaintiff's
motion.**

IT IS SO ORDERED.


J.L. EDMONDSON
United States Circuit Judge



Janusz Kapusta

Justice Taken Too Far

By Laurence H. Tribe.

Some are wildly comparing the armed seizure of Elián González to the roundup of innocents by the Gestapo. Others think Attorney General Janet Reno showed admirable patience in dealing with a group of zealots using the boy as a pawn in its war with Fidel Castro.

But the partisan squabbling over these caricatured views threatens to obscure a vital question: Where did the attorney general derive the legal authority to invade that Miami home in order to seize the child?

The fact is, even on the assumption (which I share) that under applicable legal and moral principles Elián should ultimately be reunited with his father, the government's actions appear to have violated a basic principle of our society, a principle whose preservation lies at the core of ordered liberty under the rule of law.

Under the Constitution, it is axiomatic that the executive branch has no unilateral authority to enter people's homes forcibly to remove innocent individuals without taking the time to seek a warrant or other order from a judge or magistrate (absent the most extraordinary need to act). Not only

the Fourth Amendment but also well-established constitutional principles of family privacy require that the disinterested judiciary test the correctness of the executive branch's claimed right to enter and seize.

Although a federal court had ordered that Elián not be removed from the country pending a determination of his asylum petition, and although a court had ruled that the Immigration

Reno had no right to send the agents in for Elián.

and Naturalization Service could exercise custody and control of Elián for the time being, no judge or neutral magistrate had issued the type of warrant or other authority needed for the executive branch to break into the home to seize the child. The agency had no more right to do so than any parent who has been awarded custody would have a right to break and enter for such a purpose. Indeed, the I.N.S. had not even secured a judicial order, as opposed to a judicially unreviewed administrative one, compelling the Miami relatives to turn Elián over.

The Justice Department points out that the agents who stormed the Mi-

ami home were armed not only with guns but with a search warrant. But it was not a warrant to seize the child. Elián was not lost, and it is a semantic sleight of hand to compare his forcible removal to the seizure of evidence, which is what a search warrant is for.

To be sure, our courts have allowed immigration officials to obtain area-wide warrants to search workplaces for illegal aliens, and Congress has by statute empowered immigration officials to search, interrogate and arrest people without warrants in order to prevent unlawful entry into the country. But no one suspects that Elián is here illegally.

In fact, it's hard to see any significant immigration-related or other federal interest in whether Elián was reunited with his father now or after asylum is denied (if that is the outcome). And, should asylum be granted, Elián's father might still be granted custody and could then take the boy to Cuba with him if he so chose; asylum only means permission to stay in the United States and is not a requirement to stay.

Either way, Ms. Reno's decision to take the law as well as the child into her own hands seems worse than a political blunder. Even if well intended, her decision strikes at the heart of constitutional government and shakes the safeguards of liberty. □

every U.S. consulate around the world, with a caption that reads: "America is a country where the rule of law rules. This picture illustrates what happens to those who defy the rule of law and how far our government and people will go to preserve it. Come all ye who understand that."

And I was also warmed by the picture of Elián back in his father's arms. Some things you can fake — like a 6-year-old wagging his finger on a homemade video and telling his father to go back to Cuba without him — and some things you can't fake. That picture of Elián and his father illustrated the very parent-child bond that our law was written to preserve.

Hats off to Janet Reno for understanding that the Elián González case was about both of these pictures: the well-being of a child and the well-being of our Constitution, on which all good things in our society rest. But hats off twice to Ms. Reno for understanding that these two noble virtues are not equal. The fear of causing some trauma to Elián by rescuing him could never outweigh the need to uphold the rule of law.

One only hopes that this affair will remind the extremists among the Miami Cubans that they are not living in their own private country, that they cannot do whatever they please and that they may hate Fidel Castro more than they love the U.S. Constitution — but that doesn't apply to the rest of us.

One also hopes that now that Ms. Reno has ended the kidnapping of Elián by the Miami Cubans, the other hard-nosed lady in the cabinet, Madeleine Albright, will end the Miami Cubans' kidnapping of U.S. Cuba policy as well. Ms. Albright could start by relaxing the embargo on Cuba.

I share the Miami Cubans' visceral hatred of Fidel Castro's regime. It is an awful government that has taught its people to write — and then forced its most educated to become taxi drivers and, in thousands of cases, prostitutes in order to feed their families.

But the way to hasten the end of this regime is not with embargoes and kidnappings. We have sanctioned Castro for 40 years, and so far he has outlived nine U.S. presiden-

opposite effect. It punishes Cuba and enforces Castro's rule. What ails Cuba is Castro's failed U.S. embargo on him, a foreign booby trap. Cuba's travails argue that Cuba, America, therefore remain mobilized to keep a tight rein on the dictator who persecuted his people, keeping his economy in a state of Thomas Cook tour. As Ms. Albright's policy today was shaping post-Castro Cuba, don't have another

Who should U.S. Cuba

after the regime builds a raft to get the Cuban people 40 years of repression for shaping post-Castro Cuba, training their people in a modern state the way for greater Cuba, and for family visits. At much greater risk, Castro to open the worst it will help succeeds him.

It was precisely which the hard-core Cubans kidnapped for all these years, pandering politicians believe that with kidnapping, lot better off than Reno taught the million Cuban children off tomorrow bright could a lesson in foreign

Laurence H. Tribe is a professor of constitutional law at Harvard.

Commentary

PERSPECTIVES ON ELIAN GONZALEZ

A Bad Precedent Is Reinforced



The INS seizing of the 6-year-old Cuban boy was the executive branch enforcing its own order.

By ALAN M. DERSHOWITZ

The family portrait of a smiling Elian reunited with his father is the current news. But the enduring precedent is reflected by the photograph of an armed government agent breaking into the home of American citizens. Although the agents had something denominated a "search" warrant, this warrant was not based on any court order issued after a full adversarial hearing. Instead, it was based on an after-hours, ex parte application that claimed that Elian was being "concealed" and "unlawfully" restrained, and that Elian was himself the subject of an INS administrative warrant of arrest. This is not the way American law enforcement should work.

The appropriate manner by which Elian should have been reunited with his father was a government request for a court order, following an adversarial hearing and determination that the Miami relatives were in contempt of court. If the relatives were then unwilling to obey the court order and turn Elian over, law enforcement authorities would have had the lawful power to arrest these relatives and remove him from the home.

Why then did the Justice Department and the INS not seek a court order? The answer is they had earlier sought such an order from the 11th Circuit Court of Appeals, which had denied it as part of the opinion ordering Elian to remain in the United States. They were afraid that if they sought such an order from a federal district court, it too would have denied it. So instead of going to court, the government simply seized the child based on an uncontested and entirely inappropriate search warrant, which courts routinely issue.

Had there been an adversarial hearing, the Miami relatives would

ence of his father, will almost certainly withdraw his application for asylum. The father's lawyer will now argue that since the 11th Circuit apparently gave some credence to the asylum application of a 6-year-old child, it has no choice but to give equal credence to his withdrawal of that application.

For whatever reason the government chose not to seek a court order following an adversarial hearing, its actions confirm a dangerous precedent: that the ex-

'No citizen has an obligation to obey the executive, unless its order is lawful and backed by judicial authority.'

ecutive branch of the government has the authority to break into a citizen's home in a contested dispute without giving that citizen the opportunity first to present his side to a court for resolution of the dispute.

This dangerous precedent has long permitted the INS and its predecessors to break into the homes of aliens, to raid factories of citizens who employ aliens and to act in other high-handed ways without prior court approval. Civil libertarians recall with horror the Palmer raids in which immigration officials rounded up thousands of Italian, Irish and Jewish "radicals" during and following World War I. This practice has continued unabated and manifests itself today in the frequent raids conducted by immigration officials in Southern California, Texas and Florida. When the objects of these raids are

Mexican workers, civil libertarians express appropriate outrage, because they disagree with both the means and the ends of such raids. But when the object of such a raid is the reunion of a Cuban father and his son, many liberals and civil libertarians remain suspiciously silent or even supportive of lawless government action, because in this case they agree with the end and believe that a good end justifies bad means.

This situational approach to civil liberties considerably weakens the credibility of those who claim to believe in due process. People who support procedural safeguards only in cases where they agree with the substantive rights at issue, are legitimately subject to accusations of hypocrisy. Our system of checks and balances must be applied vigorously even in cases in which the executive is seeking to achieve a desirable end. The most important check on the excesses of the executive branch is judicial review, as has been acknowledged since the foundational Supreme Court decision in *Marbury vs. Madison*. Although that case involved a judicial check on unconstitutional action of the president, the principle applies to any case where the executive seeks to act in violation of the rule of law.

In the Elian Gonzalez case, the executive had a traditional legal option available to it, which it could have pursued weeks ago. It could have asked a court to order the Miami family to turn the child over to his father. Instead, the Justice Department, a part of the executive branch, issued its own order and imposed its own deadlines. Under American law, no citizen has an obligation to obey the executive, unless its order is lawful and backed by judicial authority. By enforcing its own order, without the judicial imprimatur of a court mandate, the Justice Department has reinforced a precedent that endangers the rights of all American citizens.

Alan M. Dershowitz, a syndicated columnist, is the author of "The Genesis of Justice" (Warner, 2000).

Boy

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Congress of the United States

Washington, DC 20515

April 21, 2000

cc: Maria

William Jefferson Clinton
President of the United States
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President,

We write to you today to express our deep concerns regarding current and future relations with the Government of Cuba.

First, we would again strongly urge your Administration to act as quickly as possible to reunite six-year-old Elian Gonzalez with his father. We have met with Juan Miguel Gonzalez and believe he is a loving father who desperately wants to have his family whole again. Further delay will only result in more pain for Elian, his father and their entire family. We are encouraged by your clear and forceful expression of support for the reunification of this family and hope that reunion occurs soon.

Second, we have just returned from a five-day trip to Cuba with leading academics from Massachusetts to promote more academic and cultural exchanges between our two countries. We would ask that the Administration be supportive in providing the necessary licenses and visas for these exchanges to be successful.

Third, we respectfully ask that you re-evaluate current U.S. policy towards Cuba and use your executive authority to waive provisions in the Helms-Burton law that continue to inflict economic hardship on the Cuban people and do nothing towards fostering a more open and democratic Cuba. The status quo represents forty years of a failed policy. The Elian Gonzalez case puts a human face on the misunderstanding and distrust that develop when two countries fail to deal with each other in a mature and rational manner.

Fourth, we believe one way to foster a better relationship is through more direct contact at the highest level of our Government. We respectfully urge that you, a bipartisan group from Congress, leading academics and other high-level actors from the U.S. travel to Cuba before the year is out.

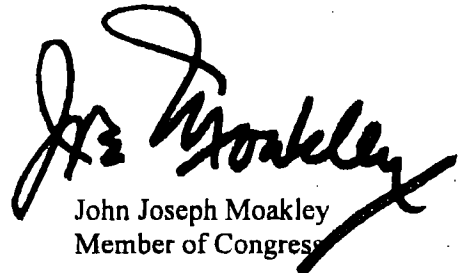
Fifth, we ask for the opportunity to sit down with you in the near future to discuss these issues and our most recent trip to Cuba in more detail.

Mr. President, you have the ability and the opportunity to open a new chapter in the history of U.S.-Cuban history. We urge you, with all respect, to take advantage of this unique moment and change the course of U.S.-Cuban relations for the better.

Sincerely,



James P. McGovern
Member of Congress



John Joseph Moakley
Member of Congress

**FACSIMILE TRANSMITTAL COVER SHEET**

To: Maria Echaveste**Fax #:** (202) 456-6594**From:** Irwin Redlener, M.D.**Date:** April 17, 2000The number of pages in this fax (including cover page): 3

If there are any problems with this fax transmission, please call Joan Pierson.

Marge:

As discussed, please forward to Ms. Echaveste.

Thanks.

from the desk of:
Joan Pierson
Executive Assistant to
Irwin Redlener, MD
(212) 535-9707
(212) 535-7488 (fax)

IRWIN REDLENER, M.D.
President



April 17, 2000

United States Attorney General Janet Reno
and Commissioner Doris Meissner, Immigration and Naturalization Service
United States Department of Justice
Tenth Street and Constitution Avenue, NW
Washington, D.C. 20530

Dear Attorney General Reno and Commissioner Meissner:

At the request of Commissioner Meissner, I have been actively engaged in providing strategic guidance regarding management of the Elian Gonzalez case, including the selection of the mental health professional team. This team was charged with establishing guidelines to ensure an orderly and positive transfer of the child to the custody of his father.

I believe this nationally esteemed team of child mental health professionals has been highly effective in providing the needed guidance. As requested, the team focused on recommendations specifically geared toward what the *adults* related to Elian should do in order to ensure the best possible environment for the child's reunification with his father. From the beginning, there was an explicit, prospective agreement that the mental health team would meet with the father and with the custodial family in Miami and *not meet* directly with the little boy. This was because the team was asked to evaluate *not whether* the transfer was being made, but *how* it would be made in the least traumatic way possible.

In recent days the crisis has taken a profound turn for the worse. There are continued, frantic legal maneuverings of the Miami family, a bevy of new, unfounded allegations of paternal abuse raised by the custodial family about the father's former relationship with Elian and the release of a video tape showing this six-year old boy expressing anger and other most unusual behaviors on what appeared to be a coached, homemade recording. All of this has significantly raised the stakes and our level of concern about Elian's immediate well-being, particularly since it is occurring in an environment of radical hysteria, and suggestions of public defiance and potential violence promulgated by the custodial family and their supporters in Miami.

Page 2

Attorney General Janet Reno and Commissioner Doris Meissner

April 17, 2000

My point is this: *Elian Gonzalez is now in a state of imminent danger to his physical and emotional well-being in a home that I consider to be psychologically abusive.* In a less politically charged environment, out of the limelight of what has become a media frenzy, appropriate child welfare workers and other public officials would have already been called upon to evaluate the safety of the current environment and, in my view, would have removed Elian from the custody of the Lazaro Gonzalez.

Therefore, in my professional judgement, the United States government, through its appropriate agencies and under its legally vested rights and responsibilities should:

1. Immediately remove Elian Gonzalez from the custody of Lazaro Gonzalez. As I indicated above, the current environment and the production of the videotape last week reflect a profoundly disturbing and dangerous environment for this child.
2. Return Elian to the custody of his biologic father, Juan Miguel Gonzalez as quickly as possible. Every day, indeed every hour of delay in this inevitable and appropriate reunification, is harmful to the boy and is the cause of extreme anguish to a legitimately distressed father. Our country has no reason and no right to continue this unconscionable refutation of a parent's moral right to be with his child.
3. Ask the custodial family to participate in discussions around implementation of reunification recommendations made by your own mental health consulting team. This should happen once Elian is returned to the custody of his father.

I believe there is no justification whatsoever to wait any longer in carrying out these actions that I believe are legally appropriate and, more importantly, clearly in the best interest of this child who continues to be horrendously exploited in this bizarre and destructive ambiance. It has gone on far too long.

Respectfully,



Irwin Redlener, M.D.

President and Director of Community Pediatrics, *The Children's Hospital at Montefiore*

Professor of Pediatrics, The Albert Einstein College of Medicine

President, The Children's Health Fund.

317 East 64th Street
New York, New York
(212) 535-9707

THE WHITE HOUSE
WASHINGTON

FAX COVER SHEET

TO: *Mano Echeverria*
Fax: *6-1907*

**FROM: Irene B. Bueno, Special Assistant to the President
for Domestic Policy**
217 Old Executive Office Building
Washington, DC 20502
Phone: 202-456-6558 Fax: 202-456-5581
E-mail: irene_bueno@opd.eop.gov

DATE: *3/22/00*

PAGES: *5* **INCLUDING COVER**

- ☒ Per my e-mail or voice mail.
☐ For your information or review.
☐ Per your request.

COMMENTS:

Ethan Letter

03/22/00 18:35

B

002

ORRIN G. HATCH, UTAH, CHAIRMAN

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 CHARLES E. GRASSLEY, IOWA
 ARLEN SPECTER, PENNSYLVANIA
 JON KYL, ARIZONA
 MIKE DEWINE, OHIO
 JOHN ASHCROFT, MISSOURI
 SPENCER ABRAHAM, MICHIGAN
 JEFF SESSIONS, ALABAMA
 BOB SMITH, NEW HAMPSHIRE

PATRICK J. LEAHY, VERMONT
 EDWARD M. KENNEDY, MASSACHUSETTS
 JOSEPH R. BIDEN, JR., DELAWARE
 HERBERT KOHL, WISCONSIN
 DIANNE FEINSTEIN, CALIFORNIA
 RUSSELL D. FEINGOLD, WISCONSIN
 ROBERT G. TORRICELLI, NEW JERSEY
 CHARLES E. SCHUMER, NEW YORK

MANUS COONEY, Chief Counsel and Staff Director
 BRUCE A. COHEN, Minority Chief Counsel

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 22, 2000

The Honorable Doris Meissner
 Commissioner
 Immigration and Naturalization Service
 425 Eye St. N.W.
 Washington, D.C. 20536

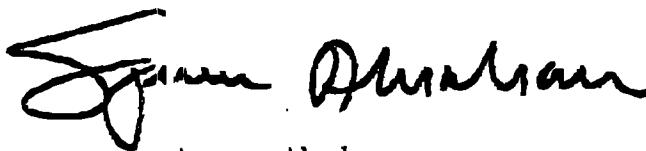
Dear Commissioner Meissner:

Enclosed are copies of S. 1999, private immigration legislation for the relief of Elian Gonzalez-Brotons.

The bill was introduced by Senator Connie Mack on January 24, 2000, and referred to the Senate Judiciary Committee. In order to ensure comprehensive consideration of S. 1999, I ask that you send to the Subcommittee a departmental report on the beneficiary.

Thank you for your attention to this request. Please forward the necessary information at your earliest convenience.

Sincerely,



Spencer Abraham
 Chairman
 Subcommittee on Immigration

ESA/mai
 Enclosures

03/22/00 18:35 8

003

CONNIE MACK
FLORIDA

United States Senate

WASHINGTON, DC 20510-0904

March 22, 2000

The Honorable Spencer Abraham
Senate Dirksen 329
Washington, D.C. 20510

Dear Spence:

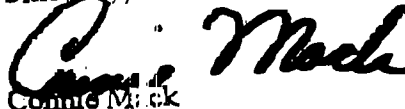
I have recently introduced S. 1999, a private relief bill for Elian Gonzalez-Brotons. I am writing to ask for your assistance to notify the INS immediately about the bill and ask for their report on the case.

As you are aware, Elian Gonzalez was found off the coast of Florida on Thanksgiving Day. The Coast Guard transported Elian to a local hospital. His mother along with 11 others, died during the voyage from Cuba to the United States. Soon after, the INS granted Elian a temporary deferral of his inspection and placed him in the care of his paternal great uncle, Lazzaro Gonzalez. Several asylum petitions were filed on behalf of Elian; however, the INS withdrew these applications stating that only Elian's father could file a petition on behalf of his son.

On January 19, 2000, Lazzaro Gonzalez filed a lawsuit in federal court alleging that the INS lacked the authority to reject the asylum applications and was required by federal statutes and regulations to accept and adjudicate those applications. On March 21, 2000, Judge Moore ruled that the determination to grant asylum is a matter within the discretion of the Attorney General, and that the Attorney General did not abuse her discretion in this case.

As you have requested, Elian's alien number is 77013761 and his current address is 2319 Northwest 2nd Street, Miami, FL 33128. Thank you very much for your assistance in this matter.

Sincerely,

Connie Mack
United States Senator

03/22/00 18:35

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II

Calendar No. 427

106TH CONGRESS
2D SESSION**S. 1999**

For the relief of Elian Gonzalez-Brotons.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2000

Mr. MACK (for himself, Mr. TORRICELLI, Mr. HELMS, Mr. LOTT, and Mr. GRAHAM) introduced the following bill; which was read the first time

JANUARY 25, 2000

Read the second time and placed on the calendar

A BILL

For the relief of Elian Gonzalez-Brotons.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. NATURALIZATION OF ELIAN GONZALEZ.**
- 4 Notwithstanding section 337(a) or any other provi-
- 5 sion of title III of the Immigration and Nationality Act
- 6 (8 U.S.C. 1401 et seq.), Elian Gonzalez-Brotons shall be
- 7 considered to be a naturalized citizen of the United States
- 8 as of the date of enactment of this Act and shall be fur-

03/22/00 18:36



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- 1 nished by the Attorney General with a certificate of natu-
- 2 ralization.

ELIAN GONZALEZ

Background

On November 25, 1999, the Coast Guard intercepted two fishermen who had rescued (then) five-year-old Elian Gonzalez from the Atlantic Ocean off the coast of Florida. His mother had perished during the ill-fated voyage from Cuba to the United States. The Coast Guard transported Elian to the hospital, where the Border Patrol (a part of INS) gave him a temporary “parole” into the care of his great-uncle, Lazaro Gonzalez. Elian’s father, Juan Gonzalez, who had begun gathering birth certificates and other papers the day after Elian was found, soon requested his son’s return through the Cuban government. Elian’s Miami relatives, however, refused to return him, alleged that his father was under duress in Cuba, and filed an asylum claim in his behalf.

On January 5, INS, after interviewing Elian’s relatives in Miami and his father twice in Cuba, determined that Juan was Elian’s father, that he had a close and loving relationship with the boy, and that he was expressing his true wish that Elian be returned to him (regardless of allegations that he actually wanted to come to the United States himself). Applying the basic principle that parents speak and make decisions for their children, INS accepted Juan’s request that the asylum application not be considered, rejected it on that ground, ruled that Elian should be reunited with his father, and called upon the family to effectuate the transfer cooperatively. The Miami relatives appealed to the Attorney General, who upheld the INS’s decision on January 12.

Just prior to the Attorney General’s January 12 decision, the Miami relatives obtained an order from a Miami-Dade family court purporting to give Lazaro temporary interim custody of Elian, and the authority to file immigration applications for him. A controversy erupted upon discovery that the Miami family’s publicist Armando Gutierrez had worked on the family court judge’s judicial election campaign. The judge, Rosa Rodriguez, later recused herself from the case. The Attorney General’s January 12 decision stated that “the question of who may speak for a six-year-old child in applying for admission or asylum is a matter of federal immigration law,” and that the “Florida court’s order has no force or effect insofar as INS’s administration of the immigration laws is concerned.”

The Miami relatives filed a complaint in the U.S. District Court in Miami, seeking to force the INS to adjudicate the asylum application filed by Lazaro, and to enjoin Elian’s return to his father. The district court dismissed the complaint on March 21, upholding the Attorney General’s decision that the asylum application was not properly before the INS in view of Juan’s objection to it. The court observed that “each passing day is another day lost between Juan Gonzalez and his son.” The Miami relatives have appealed the decision, but have not sought an injunction pending appeal. The Department is thus free to carry out its decision under the immigration laws.

Because the Court of Appeals has set an expedited briefing schedule, with oral argument the

week of May 8, the INS has been willing to entertain the Miami family's request for continuing Elian's present care arrangements through the appeal. In return, the Department has asked for assurances that the child will be turned over cooperatively if the Miami relatives' appeal is unsuccessful. The family has not been willing to give these assurances, and the INS has indicated that without them it will revoke Elian's parole. Tense negotiations took place during the week of March 27, and the parole revocation date was twice extended. It is now set for 9:00 a.m. on April 4, with further talks set for April 3.

On March 29, Fidel Castro announced that he would allow Juan Gonzalez, his common law wife and child in Cuba, and an entourage of relatives, schoolmates, teachers, and medical professionals to travel to the United States to retrieve Elian. [Discussions are in progress with Juan's attorney, Greg Craig, regarding arrangements for a possible trip by Juan and others to the United States. On camera, all that should be said on this score is that the Department has been in contact with Mr. Craig.]

Talking Points

- **The ability of parents to speak and make decisions for their children is one of the most basic principles in our legal system.**
- **The dispute over Elian boils down to this: Certain relatives are preventing Elian from returning home to his father, simply because the father has the misfortune of living in a country whose government we do not like. That simply cannot be a basis for separating children from their parents. Even parents in communist countries are entitled to raise their children. (If they were not, every child in China and lots of other countries whose systems of government we oppose should be separated from their parents, too.)**
- Elian is not being deported or removed from the United States. His father is his sole surviving parent and has asked that the child be returned to him. In contemplation of law, Elian is returning voluntarily to Cuba, and is being prevented from doing so by his Miami relatives.
- The INS decision in this case, which the Attorney General subsequently ratified and a federal district court has now upheld, made two essential determinations:
 - First, a six-year old child is too young to make decisions for himself on matters of immigration law.
 - Secondly, the only person who can speak for this child on immigration matters is his sole surviving parent—his father, with whom Elian has had a close relationship for the first six years of his life.
- The Miami relatives claim that, instead of allowing the child's father to speak for him, Elian "deserves his own day in court." But, obviously, it is not Elian himself who is directing the court

litigation. It is adults who are purporting to speak for him, and these adults—unlike Elian’s father—are people who had scarcely (or never) even met Elian before four months ago.

- This boy is not an orphan. He has a father who loves him. You can see that he is a bright, precocious, and well-adjusted child. The evidence, carefully gathered by the INS, indicates that Elian lived with his father for part of every week up until the time he left Cuba, and had an extremely close and loving relationship with him.

- The relatives’ recent claim that Elian is “afraid” to return to his father is not relevant. And I would add that no one claimed he was afraid of his father at the beginning of his stay with the relatives.

- At the beginning of the case, the Miami relatives said that Juan Gonzalez was being held in Cuba and couldn’t speak for himself. Now, when he says he’s coming here, they claim he’s a bad father, something they didn’t say at the beginning.

- The INS is willing to hold up enforcement of its decision voluntarily for the duration or the appeal if the Miami relatives promise to turn the boy over as required by law if the appeal is unsuccessful. [This arrangement would be displaced, obviously, if the father actually comes to America in the interim.] This is not an onerous requirement. INS is not asking the Miami relatives to do anything more than what is already required by federal law. People who are given temporary care of a minor, like Elian, who has been paroled into this country must agree upon request to produce the child when ordered to do so by INS.

Court Actions and Legal Standards

- As noted above, the Commissioner’s and Attorney General’s decisions in this case were based on a determination of who speaks for a child who is too young to speak for himself on immigration matters. The Attorney General concluded that, “under universally accepted norms,” the person who can speak for this child is his sole surviving parent. Although the legal principle that upholds parental authority over children of tender years does not expressly incorporate a “best interests of the child” analysis, the fact that our laws uphold the parent-child bond and make it difficult to deprive parents of custody over such children surely reflects a judgment that it is in the best interest of children to grow up under the care of their natural parents. [N.B., however, the penultimate bullet below, to the effect that “best interests of the child” analysis does not even figure in the state court proceeding.]

- When these decisions were challenged in federal district court, Lazaro Gonzalez argued that the Commissioner and Attorney General had violated the law when they honored the father’s decision that Elian did not want to apply for asylum and therefore declined to adjudicate the asylum application that other adults had submitted to the INS, purportedly on Elian’s behalf. The federal judge concluded that Congress has delegated broad authority and discretion to the Attorney General to administer the immigration laws and that her decision that the father speaks

for this child reflected a reasonable interpretation of the immigration law and must be upheld.

- The federal judge who dismissed the Miami relatives' case said that "[e]ven this well-intentioned litigation has the capacity to bring about unintended harm." He also pointed out the "reality that each passing day is another day lost between Juan Gonzalez and his son."
- This case is a matter of federal immigration law. It does not belong in the state courts. An unaccompanied minor has arrived on our shores, and his sole surviving parent has asked that he be returned. The father's wish should be carried out, as it is in hundreds of other cases.
- The Miami relatives would not get a "best interests of the child" determination even in the state court. That test is used when you have a parent against a parent. If it's a parent against anyone else, the parent wins, unless the parent is proven to be unfit. And that requires a very serious level of proof. Parental rights are among the most fundamental rights recognized in law.
- With regard to the bills in Congress, I do not believe the United States should be in the business of conferring U.S. citizenship or residency on people who do not want to be U.S. citizens or residents. These benefits are precious, and sought by many as the achievement of a lifetime. They should not be forced upon people who want only to go home and resume their lives. And they should not be used for political ends.

P.O. Box 177
East Hampton, NY 11937
Tel: 631-324-1596
Fax: 631-324-6345
fundamstad@aol.com

MRS. ANTHONY D.
DUKE

Facsimile

To: Honorable William J. Clinton

From: Luly Duke

Attn: Maria Echavesto

Fax: 202-456-1907

Pages: 5

Phone:

Date: 4/21/00

Re: Elian Gonzalez

CC:

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

Mrs. Anthony Drexel Duke
P. O. Box 177
East Hampton, New York 11937
Telephone (516) 324-1596

April 21, 2000
VIA FACSIMILE

Honorable William Jefferson Clinton
President of United States
White House
1600 Pennsylvania Avenue
Washington, DC

My Dear Mr. President:

In an effort to reunite Juan Miguel Gonzalez with his son Elian, may I suggest a potentially pragmatic suggestion, which could prevent harmful, chaotic removal of young Elian from his Uncle's home in Miami? The emotions of the crowds in Miami could create further difficulties and/or cause problems for the child if not handled properly. My suggestion would lead to a peaceful reunion of the Father and Son – irrespective of the ultimate legal decision.

Here is my suggestion: My husband and I would be happy to have the Uncle and Marisleyxis bring Elian to our home and have the Cuban Mission in Washington bring Juan Miguel, Elian's father here for a private reunion.

We would honor the privacy of this reunion. Our home would be open to both sides to remain here for discussions and to renew their family ties. A friendly, neutrally placed meeting could lead to a proper solution – a solution first to reunite Father and Son and second to a peaceful end of this deadlock.

I understand that Juan Miguel wants the reunion to be a complete transfer of Elian to his custody, and that Lazaro is requesting a family meeting prior to the transfer of custody. This is the deadlock as I see it. You are the only one that can break it in a peaceful manner.

I urge you to work closely with Attorney General Janet Reno to contact the attorneys on both sides and negotiate a meeting of the family, which is essential for Elian's future and his relationship with Marisleyxis.

Warmest and best wishes in hope for a peaceful resolution.

Sincerely yours,

Luly Duke
Luly Duke

P.S. Our home is located in the north side of Three Mile Harbor in East Hampton, New York, in a secluded neighborhood. The East Hampton Airport can accommodate private planes. President Clinton as you have been to East Hampton before, I trust that you and the Secret Service are familiar with the area.

MISSION STATEMENT



The Fundacion Amistad is a not-for-profit corporation established both to increase American citizens' awareness of Cuban history, culture and society through conferences, educational seminars, and exhibits, and to create people-to-people relationships between Cuban and American educators and other professionals.

Its President and founder is Maria de Lourdes Duke (Luly), who is also Vice President of The Harbor for Boys and Girls, a sixty year old nonprofit organization in New York City that provides comprehensive education and counseling services to young people living in the inner-city.

LETTER FROM THE PRESIDENT



Fundación Amistad remains dedicated to its core mission of increasing the awareness of the American public on the history, culture and society of Cuba through conferences, educational seminars, and exhibits. Over the course of the past year, Fundación has organized and sent several delegations to Cuba in an effort to carry out its mission. With future projects already in the works, Fundación believes its work is fostering good will and important professional/social relationships between Cuba and the United States.

During 1998-1999, Fundación successfully initiated professional contacts and educational exchanges between Cuba and the United States, which included:

March 1998

- Fundación sent a nine-person delegation of professionals to Cuba to explore and investigate the status of women and children.

May 1998

- Fundación organized a symposium held at the Cooper-Hewitt, National Design Museum, Smithsonian Institution titled, "Preserving the Architecture of Cuba". The symposium attracted Cuban, Cuban-American, and American architects who came to openly discuss architectural preservation for the first time.
- Fundación and Duke University developed and implemented a six-week study-abroad program in Cuba with courses taught at the cultural institution Casa de las Americas.

November 1998

- Fundación facilitated an academic exchange in which Dr. Calixto Machado lectured at Duke University on his work in the field of Neurology and Neurosurgery.
- Fundación completed an exploratory trip with Dr. Jean Spaulding, of the Duke University Medical School to evaluate the Cuban medical system.

January 1999

- Fundación and the American Academy of Child and Adolescent Psychiatry completed a weeklong assessment of Cuban child and adolescent psychiatry and conducted an information exchange between U.S. and Cuban psychiatrists.

May 1999

- Fundación organized and facilitated an exchange between Dr. Carmelo Graffagnino of Duke University Medical Center's Neurology Department and the Instituto de Neurología de Cuba.

June 1999

- Fundación Amistad sent a delegation of educators, architects, and professionals to attend the First International Culture and Development Congress in Havana.

**FUTURE PROJECTS AND INITIATIVES
FOR THE UPCOMING YEAR INCLUDE:**

September 1999

- New York University's Child Study Center will travel to Cuba and meet with the Clinica del Adolescente and other Cuban child psychiatry groups to address Attention Deficit Disorder and Attention Deficit and Hyperactivity Disorder in children and adolescents.

January 2000

- Fundación will assist the Clinica del Adolescente in implementing their project titled "Towards a Happy Adolescence in the Year 2000". Fundación will also send the clinic supplies to run the program and set up a group to monitor the Clinic's progress.
- Fundación is organizing an Institutional and Management Training Program for Casa de las Americas. Casa de las Americas plays a vital role in the arts and culture of not only Cuba, but throughout Latin America and is in need of management training programs in order to ensure its survival as an institution in the future.

February 2000

- Fundación is developing a Science and Environmental Education Program for teachers in Cuba based on a similar program that is run by Boys Harbor in New York City. This program will exchange ideas with Cuban teachers on the ways children can be taught to explore, protect and appreciate their natural environment.

Spring 2000

- Fundación is creating an initiative titled "Cuba: Multidisciplinary Approaches to Mental Health and Education". Fundación is putting together a delegation of social workers and psychologists to conduct an exchange of information and methodologies with their Cuban counterparts.

May 2000

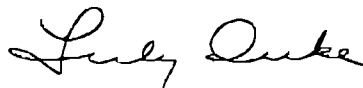
- Duke University will return to Cuba for their second Summer Study Abroad program led by Professor Orin Starn of the Duke University Anthropology Department.

June 2000

- Fundación will organize a delegation to attend and participate in a discussion panel at an international conference being held in Cuba regarding Child and Mental Health Issues.

As these projects are being planned and implemented, ongoing efforts are underway to seek foundation support.

I would like to thank the many private citizens, foundations, and companies who have contributed and supported Fundación Amistad with all its work. It is my hope that as Fundación prepares for the coming year, it will receive continued support of old and new friends so we can carry on our mission to bring understanding between Cuba and the United States.



Luly Duke
President

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APR 19 2000
THOMAS K. KAHN
CLERK

No. 00-11424-D

**ELIAN GONZALEZ, a minor, by and through
LAZARO GONZALEZ, as next friend, or,
alternatively, as temporary legal custodian,**

Plaintiff,

v.

**JANET RENO, Attorney General of the United States;
DORIS MEISSNER, Commissioner, United States
Immigration and Naturalization Service;
ROBERT WALLIS, District Director,
United States Immigration and Naturalization Service;
UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE; and UNITED
STATES DEPARTMENT OF JUSTICE,**

Defendants.

**Appeal from the United States District Court
for the Southern District of Florida**

Before EDMONDSON, DUBINA and WILSON, Circuit Judges.

BY THE COURT:

Elian Gonzalez ("Plaintiff"), a six-year-old child from Cuba, has made his way to the United States. Plaintiff, as an alien, submitted an application for asylum, pursuant to 8 U.S.C. § 1158(a), to the Immigration and Naturalization Service ("INS").¹ His father asked, in effect, that the application be withdrawn. After an investigation, the INS -- deciding that Plaintiff could not apply for asylum himself and that, under the circumstances, only his father could seek asylum on Plaintiff's behalf -- concluded that there was no reason not to honor the father's request and, accordingly, refused to consider Plaintiff's application. Plaintiff then brought suit in federal district court challenging on several grounds the INS's refusal to consider his application.² The district court rejected Plaintiff's claims.

¹ Several applications for asylum were actually submitted on Plaintiff's behalf. One was signed by Plaintiff himself. The others were signed by Plaintiff's great uncle and temporary custodian (selected by the INS), Lazaro Gonzalez.

² Plaintiff is a minor; Plaintiff's suit was brought by and through Lazaro Gonzalez as next friend. See generally Fed. R. Civ. P. 17(c).

Plaintiff has appealed the district court's decision to this Court.³ His appeal is scheduled to be argued orally next month. Plaintiff, however, now moves for an injunction "to preclude [Plaintiff's] physical removal from the jurisdiction of the United States during the pendency of this appeal."⁴ We conclude that Plaintiff is entitled to such an injunction and grant the motion.

In considering a motion for injunction pending appeal, we examine four factors: (1) whether the movant is likely to prevail on the merits of his appeal; (2) whether, if we do not issue an injunction, the movant will suffer irreparable harm; (3) whether, if we issue an injunction, any other party will suffer

³ This Court, on 27 March 2000, expedited Plaintiff's appeal and scheduled oral argument for the week of 8 May 2000.

⁴ A party must ordinarily first move in the district court for an injunction pending appeal. In this case, Plaintiff came directly to the appellate court. A motion for an injunction pending appeal may be made directly to the court of appeals when a party shows that moving first in the district court would be impracticable. See Fed. R. App. P. 8(a)(2). In this case, we are satisfied that Plaintiff has sufficiently shown that it would have been impracticable to move first in the district court: the time-sensitive nature of the proceedings and the possibility that we could have lost jurisdiction in the absence of an injunction support our exercise of discretion in this case. See also Michael v. INS, 48 F.3d 657, 663 (2d Cir. 1995).

On 13 April 2000, a single-judge emergency order, enjoining Plaintiff's removal from the United States, was issued until a three-judge panel had considered fully Plaintiff's motion for injunction pending appeal. We now have considered fully Plaintiff's motion, and the single-judge emergency order has served its purpose. The single-judge order, accordingly, is replaced by this Order.

substantial harm; and (4) whether an injunction would serve the public interest. See In re Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). Although the first factor is generally the most important, the movant need not always show that he probably will succeed on the merits of his appeal. Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). Instead, where the "balance of the equities weighs heavily in favor of granting the [injunction]," the movant need only show a "substantial case on the merits." Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. 1981); see also Hilton v. Braunskill, 107 S. Ct. 2113, 2120 (1987); United States v. Hamilton, 963 F.2d 322, 323 (11th Cir. 1992); Garcia-Mir, 781 F.2d at 1453.

In this case, the balance of the equities weighs heavily in favor of enjoining the removal of Plaintiff from the United States pending appeal. And Plaintiff has made a "substantial case on the merits" of his appeal.

1. "Balance of the Equities"

The equities, in this case, weigh heavily in favor of issuing an injunction pending appeal. Apart from concerns about what might happen to this child if he is returned to Cuba (which we do not address), if Plaintiff leaves the United

States during the pendency of his appeal, his case will likely become moot. Our failure to issue an injunction pending appeal, therefore, could strip the Court of jurisdiction over this case and deprive Plaintiff forever of something of great value: his day in a court of law. That circumstance alone presents a significant risk of irreparable harm to Plaintiff. See Michael v. INS, 48 F.3d 657, 664 (2d Cir. 1995).

In addition, we doubt that an injunction would harm the INS.⁵ Plaintiff has been in the United States for nearly five months. The INS refused to consider Plaintiff's application for asylum more than three months ago. The INS, however, has not sought to remove Plaintiff in the meantime from the United States. The suggestion that an injunction pending appeal, prohibiting the removal of Plaintiff from the United States until Plaintiff's expedited appeal is decided on the merits, will harm the INS is not compelling.

Nor do we believe that an injunction pending appeal in this case would offend the public interest. The INS, in opposition to Plaintiff's motion, invokes the well-established authority of the political branches of government in immigration affairs. We fully recognize the plenary power of Congress over

⁵Multiple Defendants are in this case. But we refer to Defendants collectively as the "INS."

immigration matters. See Jean v. Nelson, 727 F.2d 957, 965 (11th Cir. 1984) (en banc). But we fail to see how an injunction in this case infringes upon the congressional power; after all, the heart of Plaintiff's appeal is that the INS -- by refusing to consider Plaintiff's asylum application -- has disregarded the command of Congress. And we doubt that protecting a party's day in court, when he has an appeal of arguable merit, is contrary to the public interest. We, therefore, conclude that the equities weigh heavily in favor of granting an injunction pending appeal.⁶

⁶The INS also asserts that, under the equitable doctrine of "unclean hands," Plaintiff is unentitled to seek the equitable remedy of an injunction pending appeal. The INS urges that Lazaro Gonzalez's alleged failure to comply with an INS order, directing that he surrender Elian Gonzalez to the INS at a Miami airport, renders Plaintiff's hands unclean. Whether Lazaro Gonzalez failed to comply with a lawful order of the INS and whether such failure would justify invocation of the unclean hands doctrine in some cases are issues that we need not decide today. Lazaro Gonzalez is not the plaintiff in this case; Plaintiff is Elian Gonzalez. However unclean Lazaro Gonzalez's hands may be, the INS has suggested no misconduct on the part of Plaintiff, Elian Gonzalez, that would justify application of the unclean hands doctrine in this case to him.

2. "Substantial Case on the Merits"

This case is mainly about statutory construction and the proper exercise of executive discretion. Among other things, we must ultimately decide what Congress meant when it said:

Any alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1). Plaintiff argues that the INS's refusal even to consider his application violates 8 U.S.C § 1158(a). The INS contends that, because Plaintiff is a six-year-old child, he is incompetent to submit an application on his own behalf and that, on the facts of this case, he must have his father submit the application for him.⁷ Because his father did not do so, the INS contends that Plaintiff never actually applied for asylum and that, therefore, no application exists for its consideration. Even accepting as we do the principles of deference set out in Chevron v. Natural Resources Defense

⁷Although the INS determined that Plaintiff was incompetent to make immigration decisions, it bears repeating that the INS made this determination without having met with Plaintiff or having any evaluations done on his capacity.

Council, Inc., 104 S. Ct. 2778 (1984), we at this time have doubt, in the light of the record and Plaintiff's arguments on appeal, about the correctness of the INS's interpretation of section 1158.

In considering an agency's interpretation of a statute, we first must examine the plain meaning of the pertinent statutory language: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Chevron, 104 S. Ct. at 2781 (1984). The statute in this case seems pretty clear. Section 1158(a)(1) provides that "[a]ny alien . . . irrespective of such alien's status, may apply for asylum." Plaintiff appears to come within the meaning of "[a]ny alien." See 8 U.S.C. § 1101(a)(3). And the statute plainly says that such an alien "may apply for asylum." We, therefore, question the proposition that, as a matter of law, Plaintiff (unless his father consents) cannot exercise the statutory right to apply for asylum.

Congress's provision for "any alien" is not uncertain in meaning just because it is broad. See Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S.

⁸Congress specifically and expressly excluded three groups of aliens from the meaning of "[a]ny alien." See 8 U.S.C. § 1158(a)(2). School-age children are not among the excluded groups, however. See id.

206, 211 (1998). If Congress had meant to include only some aliens, perhaps Congress would not have used the words "any alien."⁹ In addition, although the INS has the authority to issue regulations and procedures governing the submission of asylum applications, see 8 U.S.C. § 1158(d), the INS cannot properly infringe on the plain language of the statute or the clear congressional purpose underlying it. See Shoemaker v. Bowen, 853 F.2d 858, 861 (11th Cir. 1988). Nor can the INS properly narrow the scope of a statute through regulation. See Ellis v. General Motors Acceptance Corp., 160 F.3d 703, 708-09 & n.5 (11th Cir. 1998). At this time, we cannot say that "any alien" excludes Plaintiff: given the plain language of the statute, he might be entitled to apply personally for asylum. Furthermore, it seems unclear that an INS decision to treat Plaintiff's application as a nullity without an adjudication on the merits is a "procedure for the consideration of [Plaintiff's] asylum application." See 8 U.S.C. § 1158(d)(1).

⁹To some people, the idea that a six-year-old child may file for asylum in the United States, contrary to the express wishes of his parents, may seem a strange or even foolish policy. But this Court does not make immigration policy, and we cannot review the wisdom of statutes duly enacted by Congress. If Congress intended -- as evidenced by the plain meaning of section 1158 -- that a school-age child (such as Plaintiff) be able to file personally an application for asylum, this Court and the INS are bound to honor the policy-decision made by Congress.

Not only does the plain language of the statute seem to support Plaintiff's argument that he, despite his age, is entitled to apply personally for asylum, the present regulatory scheme created by the INS also seems to strengthen Plaintiff's position. The existing INS regulations do envision situations where a minor may act on his own behalf in immigration matters.¹⁰ Moreover, the regulations contemplate that a minor, under some circumstances, may seek asylum against the express wishes of his parents.¹¹ Also, the INS Guidelines for Children's Asylum Claims (Dept. of Justice, December 1998)

¹⁰See 8 C.F.R. § 103.2(a)(2) ("An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old.") (emphasis added); 8 C.F.R. § 236.3(h) ("When a juvenile alien is apprehended, he or she must be given a [Notice of Rights and Disposition Form]. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new [form] shall be given to and signed by the juvenile.").

¹¹See 8 C.F.R. § 236.3(f) ("If a juvenile seeks...any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief"); Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985); cf. Johns v. Dept. of Justice, 624 F.2d 522 (5th Cir. 1980).

("Guidelines") envision that young children will be active and independent participants in the asylum adjudication process.¹²

¹²The Guidelines provide asylum officers with information about how to talk to and interview a young child about his asylum application. The Guidelines repeatedly stress that the kind of questions which should be asked and the kind of answers which should be expected varies according to the age of the applicant and that special care should be taken when interviewing young children. The Guidelines also say that "Asylum Officers should not assume that a child cannot have an asylum claim independent of the parents," and that "[w]hen a parent or parents do not appear to have an approvable claim, an Asylum Officer should routinely make an inquiry into the child's case even though the child may be listed merely as a derivative on a parent's application and may not have filed a separate [] asylum application." See Guidelines at 15. The Guidelines also say that "the age, relative maturity, ability to recall events, and psychological make-up of the child will affect the quality of the answers an Asylum Officer is able to elicit from that child. While the burden of proof remains on the child to establish his or her claim for asylum, an Asylum Officer must take these and other factors into account when assessing the credibility of a claim and must also attempt to gather as much objective evidence as possible to evaluate the child's claim." See Guidelines at 17. Above all, the INS Guidelines say that "[w]hen...it appears that the will of the parents and that of the child are in conflict, the adjudicator 'will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt.'" See Guidelines at 20 (citations omitted).

An additional point of interest is that the INS Asylum Officer Corps Training Guidelines for Children's Asylum Claims (INS January 1999) discuss the three age-based developmental stages of children (0-5, 6-12, 13-18 years old) and provide guidance for asylum officers in dealing with children in each category. Notably, the training guidelines provide an example of a statement from a six-year-old child and provide information which can be used to assess statements by children of that age. See id. at 10-18.

The INS has not pointed to (nor have we found) statutory, regulatory or guideline provisions which place an age-based restriction on an alien's ability to apply for asylum. And we have found no preexisting requirement that a minor, in submitting an asylum application, must act through the representative selected by the INS.¹³

Not only does it appear that Plaintiff might be entitled to apply personally for asylum, it appears that he did so. According to the record, Plaintiff -- although a young child -- has expressed a wish that he not be returned to Cuba.¹⁴ He personally signed an application for asylum.¹⁵

¹³The INS Guidelines cite to a number of studies and articles dealing with the ability of children to testify as witnesses in judicial proceedings. See Guidelines, at 13 n.21. At the least, this reference supports the inference that the INS envisioned that the kind of competency required for a minor to apply for asylum is competency to testify, see Maryland v. Craig, 497 U.S. 836 (1990), not legal competency to contract and so on, which is a much different standard.

Caselaw supports the inference that complete legal competency has not been the determinative circumstance for whether a minor may apply for asylum. See Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985)(allowing a 12-year-old minor to apply for asylum).

¹⁴We do not now suggest that the stated intentions of a six-year-old child are dispositive or even entitled to substantial weight in deciding whether the child ultimately receives a grant of asylum. Still, a colorable argument exists that a school-age child's expressed wishes about where he wants to live can trigger the requirement that Plaintiff's claim for asylum be given full and fair consideration. This conclusion may be particularly true where, as here, Plaintiff has indicated to mental health professionals that he does not want to

Plaintiff's cousin, Marisleysis Gonzalez, notified the INS that Plaintiff said he did not want to go back to Cuba. And it appears that never have INS officials attempted to interview Plaintiff about his own wishes.

Even if the INS is correct that Plaintiff needs an adult, legal representative for his asylum application, it is not clear that the INS, in finding Plaintiff's father to be the only proper representative, considered all of the relevant factors — particularly the child's separate and independent interests in seeking asylum. Cf. Polovchak v. Meese, 774 F.2d 731, 736-7 (7th Cir. 1985); Johns v. Dept. of Justice, 624 F.2d 522, 524 (5th Cir. 1980) (recognizing in the context of a deportation hearing that the mother's interests are not necessarily the same as her four-year-old child's). It does not appear that the INS ever spoke to or interviewed Plaintiff before making this determination. And Lazaro Gonzalez, Plaintiff's great uncle, is no stranger to Plaintiff. The

return to Cuba, and where those mental health professionals have said that he understands what he is saying. These statements might ultimately not be of great weight in determining Plaintiff's application for asylum, but we are not sure that they can be summarily dismissed as having no weight at all.

¹⁵Plaintiff's application was complete. To date, none of Plaintiff's applications were returned by the INS for being incomplete. According to its own regulations, the INS "shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3)." 8 C.F.R. § 208.9(a) (emphasis added).

INS placed Plaintiff in Lazaro's care upon Plaintiff's arrival in this country, and Lazaro is a blood relative. When Lazaro submitted applications for asylum on Plaintiff's behalf, Lazaro was the INS's designated representative to take care of Plaintiff and to ensure his well-being. See 8 C.F.R. § 236.3(b)(4) (stating that where a minor is paroled to someone other than the parent or legal guardian, "such person must execute an agreement to care for the juvenile"). Lazaro's interests, to say the least, are not obviously hostile to Plaintiff's interests. So, for now, we remain unconvinced that the asylum application submitted by Lazaro on behalf of Plaintiff necessarily was ineffectual under the law.

For these reasons and in these circumstances, we believe that Plaintiff has presented a substantial case on the merits.

CONCLUSION

By its nature, this Order sets out more questions than answers. We have not attempted to address every point advanced by both sides, but we have attempted to explain our decision to grant the injunction. No one should feel confident in predicting the eventual result in this case.

The true legal merits of this case will be finally decided in the future. More briefing is expected. We intend to hear oral argument. We need to think more and hard about this case for which no sure and clear answers shine out today. Still, because of the arguments presented as well as the potential inconsistencies of the INS's present position with the plain language of the statute and with the INS's own earlier interpretations of the statute in INS regulations and guidelines, and because of the equities in this case, we conclude that Plaintiff is entitled to an injunction pending appeal.¹⁶

Therefore, it is ordered that:

- (1) Plaintiff, Elian Gonzalez, is ENJOINED from departing or attempting to depart from the United States;

¹⁶The INS, in its response to Plaintiff's motion, said it would consent to an injunction requiring the INS to bar Plaintiff's departure from the United States if this Court also entered an order directing Lazaro Gonzalez to present Plaintiff to the INS, as directed by the INS, for transfer of care to Plaintiff's father. We decline to proceed in that manner.

To decide Plaintiff's motion and to preserve his right to a day in court, we need only address the issue of Plaintiff's removal from the country. We need not decide where or in whose custody Plaintiff should remain while this appeal is pending. This Order only prevents Plaintiff's removal from this country.

- (2) Any and all persons acting for, on behalf of, or in concert with Plaintiff, Elian Gonzalez, are ENJOINED from aiding or assisting, or attempting to aid or assist, in the removal of Plaintiff from the United States;
- (3) All officers, agents, and employees of the United States, including but not limited to officers, agents, and employees of the United States Department of Justice, are ENJOINED to take such reasonable and lawful measures as necessary to prevent the removal of Plaintiff, Elian Gonzalez, from the United States.¹⁷

MOTION GRANTED.

IT IS SO ORDERED.

¹⁷Plaintiff, in his reply brief, requested that this Court order mediation in this case. Although we may direct the parties to participate in mediation, see Fed. R. App. P. 33, we choose not to do so at this time. Nevertheless, we encourage the parties to avail themselves voluntarily of this Court's mediation services.



Office of the Deputy Attorney General
U. S. Department of Justice

Washington, D.C. 20530

FAX COVER SHEET

DATE: 4/19

TO:

Beth Nolan

PHONE NO.

456 - 2632

FAX NO.

456 - 6279

FROM:

JAMES CASTELLO

Associate Deputy Attorney General

PHONE NO.

514-3392

FAX NO.

514-6897

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS:

To the editors:

Laurence H. Tribe, writing in today's edition of the *Times*, gets it embarrassingly wrong when he asserts that in the Justice Department's recovery of Elian Gonzalez from his great uncle's home in Florida "no judge or neutral magistrate had issued the type of warrant or other authority needed for the executive branch to break into the home to seize the child." Justice Taken Too Far, April 25, 2000, page A-31. Professor Tribe goes on to state, just as incorrectly, that "the agents who stormed the Miami home were armed . . . with a search warrant, . . . not a warrant to seize the child."

Professor Tribe makes these erroneous assertions in an effort to answer what he calls "a vital question: Where did the attorney general derive the legal authority to invade that Miami home in order to seize the child?" Had the good professor or the editors of the *Times* bothered to ask that question of the Department before printing their allegations, however, they would have discovered that before entering the premises on the morning of April 22, 2000, the Department had obtained a warrant, issued by United States Magistrate Judge _____, authorizing the Department to search "the residence of Lazaro Gonzalez, located at 2319 N.W. 2nd Street, Miami," and to seize "the person of Elian Gonzalez, date of birth December 6, 1993, a native and citizen of Cuba." Thus, contrary to Professor Tribe's assertion, the Department had obtained precisely "the type of warrant . . . needed . . . to break into the home and seize the child."

The magistrate was correct to issue that warrant. As was explained in the memorandum of law submitted by the Department of Justice in support of its application, the warrant was authorized by Federal Rule of Criminal Procedure 41(b), which has long provided that a warrant "may be issued . . . to search for and seize any . . . person . . . who is unlawfully restrained." This rule is designed to permit just the type of action taken here -- entry to recover a child or other person being held without legal justification.

As is well known, Elian was "unlawfully restrained" by his great uncle because on April 12, 2000, the INS had revoked Elian's parole, terminated his great uncle's right to temporary custody, and directed his great uncle to return Elian to the INS so that he could be reunited with his father, Juan Miguel Gonzalez. Elian was also "unlawfully restrained" because the great uncle's retention of Elian was contrary to Juan Miguel's clearly expressed wish to have custody of his own son. The great uncle had steadfastly refused for nine full days to surrender his illegal retention of Elian. The Department's entry and recovery of Elian, therefore, was pursuant to a warrant and unambiguously lawful.

One may legitimately disagree with the judgments that led to the recovery of Elian Gonzalez last Friday, although we believe the Department of Justice had no choice. But there can be no dispute about the legal bases for those actions. This paper and Professor Tribe owe the Department an apology for claiming otherwise.

Elian's family seeks Native support

'We all know what is morally right'

By Valerie Taliman
TODAY CORRESPONDENT

HAVANA, Cuba — Elian Gonzalez, the 6-year-old Cuban boy shipwrecked last November, is suffering the same fate as many Native children whose lives were forever changed by U.S. government policies, said Dennis Banks, co-founder of the American Indian Movement.

In one of two meetings held at the request of Elian's family here, Banks recalled that thousands of Indian children were taken by the government and placed in boarding schools where they were forced to assimilate into American society.

"Removing children from their parents and extended family resulted in the loss of languages, cultural identities and many traditional teachings," he said. "The United States is showing very weak judgment in keeping this young boy from his father and grandparents."

"We've struggled with this issue in Indian Country trying to keep our families together," Banks explained, noting that the Indian Child Welfare Act was created to curb the forced removal of Native children from their families.

"We all know what is morally right," he added. "Elian should be returned immediately."

On a recent 10-day cultural exchange to several provinces in Cuba, Banks and 13 other members of a Native delegation met with Elian's father, stepmother, baby brother, his four grandparents and Ricardo Alcaron, president of the Cuban National Assembly.

The family, tearful at times, expressed the anguish and heartache they feel daily while waiting for U.S. officials to honor international law and return their child. They said they struggled to understand why distant relatives in Miami who had met Elian only once would try to keep him over differences in political beliefs.

The delegation offered prayers, solace and support for Elian's safe return as thousands of Cuban citizens, mostly women, marched to demand his return to Cuba. The delegation included members of the Lakota, Diné, Anishinabe, Northern Paiute, Winnebago, Tlingit, Northern Ute, Omaha and Oneida tribes.

Elian's maternal grandmother, Raquel Rodriguez, denied widely reported speculation that her only child, Elizabeth, had sacrificed her life so that Elian could grow up in a free country.

"This is not true," Rodriguez said, noting Elizabeth refused to make the trip to Miami with her boyfriend, Lazaro Munero Garcia, once before, in June 1998.

"I was her mother. I speak for her because I know how she felt and how she behaved. She had everything she needed here — her family, friends, a good job. I believe she was forced to take the trip because she had a (boyfriend) who was very violent and threatened her. This is what led to this tragedy," she said.

Two survivors of the boat wreck said Munero Garcia ran a smuggling operation, charging Cubans \$2,000 each for the journey to Florida. His elderly mother and Elizabeth were among 11 Cubans who lost their lives at sea. Elian was found clinging to an inner tube two days after the boat went down and was released into temporary care of his great-uncle Lazaro Gonzales, an auto body repairman who lives in Miami.

The grandmothers said the family had no idea Elizabeth had taken Elian and left

Cuba under dangerous and illegal circumstances. Elian spent equal time at his mother's and father's homes with close ties to both families.

Juan Miguel Gonzales was waiting for his son to arrive at his home when he heard the terrible news.

One little-known fact is that Elizabeth had seven miscarriages before his birth. Juan Miguel and Elizabeth sought the help of fertility specialists and followed doctors' instructions for five years before they were able to have their cherished Elian.

U.S. Immigration and Naturalization Service officials have pleaded with Elian's relatives in Miami to allow a peaceful reunion with his father when he arrives in the United States with relatives and Elian's teacher and pediatrician.

Elian's great-uncle Lazaro Gonzalez has waged an ugly battle to keep the little boy in Miami under his care, citing the "better life" available to the child in the United States.

Anti-Castro demonstrators in Miami vowed that "Elian will not leave" in protests over the last few days and have promised to form a human chain to prevent authorities from attempting to reunite him with his father and Cuban



BILL HACKWELL/INDIAN COUNTRY

Juan Miguel Gonzalez and Native delegation dancers (left) Lakota Gilbert Blacksmith, Diné-Northern Ute Tori Nikei and Klinket-Lakota Thomas Yellowhorse.

family.

Meanwhile, Rachel Rodriguez and Mariela Quintana, Elian's grandmothers wait for him at home, praying for his safe return.

"I still have his Christmas presents," Rodriguez said.

Asked what message they would like to

send to Native Americans, the grandmothers expressed good will and friendship, saying they welcome Native people to visit their country and see first-hand the goodness of the Cuban people.

"Tell them to pray for our grandson," they said.

PHOTOCOPY
PRESERVATION



Department of Justice

Statement By the Department of Justice March 28, 2000

"From the beginning, we have been mindful of the fact that at the center of this case is a six year old boy who has been through a terrible ordeal. We are concerned for him and will continue to try to resolve this matter in a way that avoids additional trauma to him.

"We have gone to great lengths to bring about a resolution that is prompt and that is carried out in a manner that creates as little disruption for Elian as possible. Since the Commissioner announced her decision on January 5, 2000 that Elian Gonzalez' father speaks for Elian in immigration matters, the INS has encouraged all parties to work together to facilitate Elian's return to his father in a cooperative way.

"Both U.S. and international law recognize the unique relationship between parent and child, and family reunification has long been a cornerstone of both American immigration law and INS practice. This is a country where the rule of law is respected and upheld. A federal court has considered this case and has sustained the Justice Department's decision, a decision which was based on the facts and the law.

"It has been nearly twelve weeks since the Commissioner's decision, and four months since Elian was separated from his father and lost his mother. It is time for this little boy, who has been through so much, to move on with his life at his father's side. "As District Court Judge Moore said in his ruling last week: "each passing day is another day lost between Juan Gonzalez and his son.

"We continue to urge everyone involved to work together to understand, respect and uphold the bond between parent and child and the laws of the United States."

###

Talking Points
March 27, 2000

- We have never taken the position that we would wait out a full appeals process before reuniting Elian and his father.
 - We offered the Miami relatives an agreement to postpone the reunion of Elian and his father until the end of the 11th Circuit process if Lazaro Gonzalez explicitly agreed to promptly turn over Elian if their appeal did not prevail, and barring an injunction from the SC pending cert.
 - They have not agreed -- or in fact -- responded to this reasonable option that preserves their appeal rights while ensuring that Elian will not have to wait for an prolonged period before being reunited with his father.
 - We are in the process of informing Lazaro Gonzalez' counsel that we want to meet with them to work out the details of an orderly reunion between Elian and his father. We have informed counsel for Lazaro Gonzalez that Elian's parole status will be terminated as of Thursday, March 30, 2000 at 9:00 am.
-

Q: What if they still agree -- will you wait out this longer schedule?

A: We would not speculate.

Q: What is your reaction to the Court's schedule?

A: We're grateful that the Court of Appeals is willing to expedite its consideration of the case, however we continue to be concerned about the continuing separation of this little boy from his father. As we explained to the Court in our filing today, Lazaro has twice failed to commit to the condition that he to promptly turn over Elian if his appeal does not succeed. That being so, and as we told the Court of Appeals, the INS is under no obligation to maintain the current arrangement.

Q: The relatives have filed a notice of intent to appeal and say they will stay the course. Will you wait until all appeals are exhausted before removing the child?

A: As I have said, we are committed to reuniting this child with his father in a fair, prompt, and orderly way. Beyond that, I am not going to discuss the steps we may take or a timetable for achieving the reunion.

Q: What is the next step?

A: I do not think it would be appropriate for me to share the details of our plans, but I can say we will work with everybody concerned to achieve an orderly, fair and prompt reunion between Elian and his father.



Department of Justice

FOR IMMEDIATE RELEASE
Friday, March 24, 2000
WWW.USDOJ.GOV

AG
(202) 616-2777
TDD (202) 514-1888

Statement by Attorney General Janet Reno on the Elian Gonzalez Case

"As I said earlier this week, our goal is to reunite Elian with his father in a fair, prompt and orderly manner. From the beginning, we have been mindful of the fact that at the center of this case is a six year old boy who has been through a terrible ordeal. We are concerned for him and will continue to try to resolve this matter in a way that avoids additional trauma to him.

"Earlier this week, Federal District Court Judge K. Michael Moore sustained our judgment that Elian should be reunited with his father. We have been willing to postpone the reunion while the district court considered the case, but we are not willing to wait through an open-ended appeals process that could prolong the separation of this child from his father. We agree with Judge Moore that "each passing day is another day lost between Juan Gonzalez and his son," and we cannot risk the harm that a prolonged separation might create.

"That is why we have proposed a solution that allows Elian's Miami relatives adequate opportunity to appeal their case, while working to achieve a reunion between Elian and his father.

"Yesterday, we asked the relatives to agree to an expedited appeals schedule, and we also asked them to commit to quickly returning Elian to his father if their appeal does not prevail. As of this moment, they have not agreed to comply with these terms.

"We will continue to try to reach an agreement with Elian's Miami relatives that meets these objectives. To that end, we have sent their attorneys another letter this evening setting forth the next steps.

"A great strength of the United States is that we are a Nation of laws and of respect for the law. I hope that all in the community will work together to uphold our laws and help make an orderly process possible."

###

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506CC: Maria
Edgarste

OFFICE OF THE LEGAL ADVISER

MARY DEROSA

Phone: 202/456-9111

FAX: 202/456-9110

Date: 3/28/00

FAX TRANSMITTAL COVER SHEET

TO	PHONE	FAX
Jim Steinberg	69491	69490
Beth Nolan	62632	66279
Caryn Hollis	69137	69130
Dan Feldman	69141	69140

COMMENT: This is the most recent DOJ letter.

MAR-27-2000 21:24

INS GENERAL COUNSEL

P.02/03



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 27 2000

Spencer Eig, Esq.
420 Lincoln Road
Suite 379
Miami Beach, Florida 33139

Dear Mr. Eig:

Re: Elían Gonzalez v. Reno, et al., No. 11424-D (11th Cir.)

We have received your letter of this afternoon addressed to the Attorney General responding to our letter of March 24, 2000, as well as your motion to set a briefing schedule for your client's appeal to the Eleventh Circuit. We appreciate your willingness to move this case forward in an expedited manner. Your letter this afternoon does not, however, constitute the agreement that we proposed. In particular, you have refused to commit to a key element of the government's proposal of last week, namely, that your client specifically agree to comply with instructions of the Immigration and Naturalization Service (INS) concerning the transfer of Elían if the government prevails on appeal. Far from depriving Lazaro Gonzalez of his right to appeal, we have attempted to accommodate his interest in obtaining review by the Court of Appeals while assuring a prompt and orderly reunification of Elían and his father if the district court's decision is affirmed.

Your client's failure to make this commitment is critical to the government for two reasons. First, the provision of such a commitment upon request is required under Federal law as a condition of Elían's parole. See 8 CFR 212.5(c). Second, we strongly share your client's stated desire that his relationship with the government remain a cooperative one, and we emphasize that this is and will continue to be a matter entirely within his control. By giving and abiding by this commitment, your client can ensure that the case is resolved cooperatively and in a manner least disruptive to the child.

From the beginning of this case we have gone to great lengths to bring about a resolution that is reasonably prompt and that is carried out in a cooperative manner with as little disruption

MAR-27-2000 21:25

INS GENERAL COUNSEL

P.03/03

Spencer Fig, Esq.

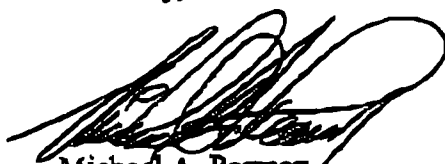
Page 2

for Elian as possible. Since the Commissioner announced her decision on January 5, 2000, that Elian Gonzalez' father speaks for Elian in immigration matters, the INS has voluntarily withheld implementation of that decision to allow your client to seek further review of that decision, first by the Attorney General and then by the Federal District Court. Nearly twelve weeks have passed since the Commissioner's decision, and you have never provided us with a simple, clear statement that your client is willing to produce the child when requested to do so by the INS. Without a specific written commitment as described in the Department of Justice's letter of March 23, 2000, we have no choice but to move forward with the termination of Elian's parole as of Thursday, March 30, 2000, at 9:00 a.m.

Accordingly, it remains necessary to meet with District Director Robert Wallis at 9:00 a.m. tomorrow morning at the INS District Office, 7880 Biscayne Boulevard, Miami. As we have previously stated, it will not be necessary to bring Elian to this meeting. We continue to believe that it is advisable to bring Lazaro Gonzalez to this meeting. If you prefer that tomorrow's meeting take place between lawyers only, and postpone a meeting with Lazaro until Wednesday, we would agree to that. We intend to discuss the ramifications of the parole termination and the orderly return of Elian to his father, including, most importantly, measures to ensure that the transfer occur in a manner that is sensitive to the needs of Elian.

Should you have any questions or concerns, please contact Assistant United States Attorney Dexter Lee at (305) 961-9320.

Sincerely,



Michael A. Pearson
Executive Associate Commissioner
For Field Operations

cc: Opposing co-counsel

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

OFFICE OF THE LEGAL ADVISER

FAX TRANSMITTAL COVER SHEET

DATE:	
TO: <i>Beth Nolau</i>	FROM: <i>Mary DeRosa</i>
PHONE NO.:	PHONE NO.: (202) 456-9111
FAX NO.: <i>66279</i>	FAX NO.: (202) 456-9110
COMMENTS: <i>Another letter from the Miami family (just got this). Mary</i>	
NUMBER OF PAGES (including cover page): <i>3</i>	

03/27/00 MON 17:12 FAX 202 458 9110
03/27/00 17:53 202 456 9130
03/27/00 16:45 FAX

NSC/LGL ADVISER
NSC-INTERAMERICA

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Page 1/2

03/27/00 13:28 202 514 1776
202 514 9077
Sent By: LAW OFFICES OF SPENCER EIG;

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Mar-27-00 12:04PM;

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SOBELAW@AOL.COM

B*H
March 27, 2000

Hon. Janet Reno
Attorney General of the United States
10th and Constitution Avenue, N.W.
Washington, D.C. 20535

BY FACSIMILE

Re: **Elian Gonzalez**

Dear Attorney General Reno:

We have complied with your demand for an expedited appeal.

We continue to view your ultimatum to cut off Elian's appellate rights as improper and rather un-American. Simply put, INS has threatened to use force to seize the boy to prevent him from completing his appeal in a fair and proper way. In order to avoid the intense psychological harm to Elian that forced deportation would cause, we have filed an emergency motion for an expedited appeal in the Eleventh Circuit Court of Appeals this morning.

In light of our cooperation, we request that your officials cease their constant threats to revoke Elian's parole. These heavy-handed tactics demonstrate a lack of sensitivity to Elian, his family and this community. Your officials have repeatedly failed to inform anyone of their intentions regarding Elian if they do revoke his parole. The only conceivable purposes of revoking Elian's parole are to either return him to the fascist regime in Cuba prior to the completion of the appellate process or to institutionalize him pending the outcome of the appeal.

If your purpose is to return him to Cuba immediately, you are, in effect, denying Elian any appeal whatsoever. Once Elian is returned to Castro's clutches he will not be permitted to leave if his appeal is successful.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To: MARY ERIC;	From: CARLYN
Dept./Agency: DAN	Phone #
Fax #	Fax #

NSN 7540-01-317-7388

5098-101

GENERAL SERVICES ADMINISTRATION

03/27/00 16:45 FAX

03/27/00 18:16

202 514 1776

03/27/00 13:28

202 514 9077

Sent By: LAW OFFICES OF SPENCER BIG;

NSC/LGL ADVISER
NSC-INTERAMERICA

INS PRESS OFFICE

DOJ

3056/2J/70;

Mar 27 - 00 12:04 PM;

Page 2/2

If your desire is to institutionalize Elian pending the appeal, or alter his present custody arrangements, we do not understand how you can consider this to be "the manner most conducive to Elian's well-being." Currently, Elian is being cared for by his family, to whom he has grown immensely attached since the premature and traumatic death of his beloved mother. No institution or stranger is capable of nurturing Elian to the degree that Marielsysis Lazaro, and his loving relatives can. The permanent psychological harm this will cause Elian has already been confirmed by his child psychologist and psychiatrist. The reports have been communicated to you already, and are part of the record of this case. Any harmful actions in light of the contents of those reports could only be described as reckless and wanton conduct. It's ironic that with all the money and effort expended by the White House, the Justice Department and the INS to deport Elian to Cuba, you have never sought to have Elian or his best interests evaluated by experts in any way, as we have done.

In light of the fact that we have filed for the expedited appeal you sought, the meeting the Associate Commissioner suggested between Lazaro Gonzalez and INS enforcement officials will not be necessary. We look forward to working with your officials achieve a prompt and fair adjudication of Elian's best interests. We remain saddened that you rejected out of hand our innovative suggestion of prompt, binding arbitration.

You should be aware of recent, broadcast threats by Cuban President Fidel Castro to send an armed commando team to Miami to kidnap Elian. Consequently, the Gonzalez family has asked the Lincoln-Martí School to educate Elian at home for the time being. The family's decision is based in part on their desire not to endanger the lives of Elian's schoolmates.

We conclude with assurances that the Gonzalez family will continue to observe the laws of the United States and the State of Florida.

Sincerely,
LAW OFFICES OF SPENCER BIG
By: SPENCER BIG

ROSENTHAL & RASCO
By: EDUARDO RASCO

COFFEY DIAZ & O'NAGHTEN, L.L.P.
By: KENDALL COFFEY
MANUEL DIAZ

HACKLEY, BERNSTEIN
& OSBERG-BRAUN, P.L.
By: LINDA OSBERG-BRAUN
ROGER BERNSTEIN

LAURA FABAR, P.A.
By: LAURA FABAR

RUDEN, McCLOSKEY, SCHUSTER
& RUSSELL, P.A.
By: JOSE GARCIA-PEDROSA

GREENBERG TRAUIG, P.A.
By: BARBARA LAGOA
JUDD J. GOLDBERG
ELIOT PEDROSA

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

OFFICE OF THE LEGAL ADVISER

FAX TRANSMITTAL COVER SHEET

DATE: 3/27	
TO: Beth Nolan	FROM: Mary DeRosa
PHONE NO.:	PHONE NO.: (202) 456-9111
FAX NO.: 66279	FAX NO.: (202) 456-9110
COMMENTS: Beth - Here are all 3 letters. 2 from DOS (3/23 + 3/24) and one from the family's lawyers (3/24). I understand there is another one from the family today, and might be another one from DOS later later today. Mary	
NUMBER OF PAGES (including cover page): 15	



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

MAR 24 2000

Kendall Coffey, Esq.
Coffey, Diaz & O'Naghten, L.L.P.
2655 South Bayshore Drive, Suite 200
Miami, Florida 33133

Re: Eliau Gonzalez v. Reno, et al., No. 11424-D (11th Cir.)

Dear Mr. Coffey:

The Department of Justice yesterday provided you with a proposal that would give your client, Lazaro Gonzalez, the opportunity to pursue an appeal of the District Court's judgment sustaining Commissioner Meissner's decision that Elian Gonzalez' father speaks for Elian in immigration matters, while at the same time assuring a prompt reunification of Elian and his father if such an appeal is unsuccessful. This proposal followed the District Court's dismissal of your client's complaint, which sought to enjoin the Immigration and Naturalization Service (INS) from implementing its decision. In our proposal, the government expressed its willingness to withhold implementation of the Commissioner's decision, without requiring your client to seek and obtain an injunction pending appeal, while your client sought review in the Eleventh Circuit. In exchange, we had asked that your client join in a motion for an expedited appeal process, agree to a specific schedule governing an appeal to the Eleventh Circuit and any proceedings before the Supreme Court, and comply with INS instructions concerning Elian's transfer to his father should your client not prevail on appeal.

In order to provide your client with the opportunity to seek and obtain review in federal court, the INS has already withheld implementation of a decision that it has had full authority to implement since the Commissioner's announcement on January 5, 2000. The government's latest proposal would have postponed implementation pending expedited review at the Eleventh

Kendall Coffey, Esq.

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Circuit and an opportunity to seek an injunction from the Supreme Court, but your response does not accept our offer.

As an initial matter, we are unable to agree to your proposal that some newly constituted body make decisions concerning Elian's future. Under the Constitution and laws of the United States, as well as universally accepted standards of the international community, a parent speaks for and makes decisions for his child, especially one of such tender years as Elian. The Commissioner has determined that Elian's father properly speaks for Elian in immigration matters. The Attorney General has ratified that decision, and the district court has now sustained it.

While your reply suggests an alternative briefing schedule, your letter agrees to neither the filing of a joint motion to expedite the appeal with an accelerated briefing schedule nor a specific written commitment by Lazaro Gonzalez to abide by the instructions of the INS regarding Elian's reunification with his father in the event of a decision on appeal in favor of the government. If we have misinterpreted the intention of your letter and your client would agree to the other terms of our proposal, we would be willing to agree to a briefing schedule that accommodates your desire to have the additional time you feel you need to file your opening brief while adhering to the overall timeframe that we had proposed. Under that alternative, the parties would jointly propose filing simultaneous opening briefs on April 3, 2000 and simultaneous reply briefs on April 10, with a request to the court for oral argument the week of April 10. Because review by the Supreme Court is discretionary with the Court, and because of the need for a prompt reunification of Elian and his father, if the Eleventh Circuit affirms the district court's decision, we would proceed to revoke parole in the absence of an injunction pending certiorari as described in our letter of yesterday.

Otherwise, and as the Department of Justice had advised you in yesterday's letter, the INS is prepared to carry out the Commissioner's decision. In light of Judge Moore's recognition that "each passing day is another day lost between Juan Gonzalcz and his son," we are not prepared to forestall the implementation of that decision to accommodate a lengthy appeals process, or without a firm commitment to an orderly reunification of Elian and his father if the Eleventh Circuit affirms the district court's decision. Elian should be reunited with his father in a prompt, fair, and orderly manner. Our offer was an attempt to reach that objective by agreement of the parties.

In the absence of such an agreement by noon on Monday, March 27, 2000, District Director Robert Wallis and I hereby give notice that Elian's parole will terminate as of Thursday, March 30, 2000, at 9:00 a.m. If you do not agree to our proposal, this time period will provide you the opportunity to seek an injunction pending appeal.

In view of the trauma that Elian has already experienced, it is obviously desirable to reunite this boy with his father in as smooth a manner as possible, and we continue to seek Lazaro Gonzalez' cooperation in that effort. Accordingly, we believe it is advisable for Lazaro

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INS GENERAL COUNSEL

202 514 6044

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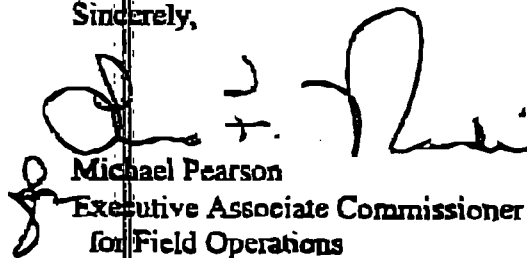
Kendall Coffey, Esq.

Page 3

Gonzalez and his counsel to meet with District Director Wallis at 9:00 a.m. on Tuesday, March 28, 2000 at the INS District Office, 7880 Biscayne Boulevard, Miami, to discuss the ramifications of the revocation of parole and the orderly return of Elian to his father. It will not be necessary to bring Elian to this meeting.

Should you have any questions, please contact Mr. Wallis at (305) 762-3680.

Sincerely,



Michael Pearson
Executive Associate Commissioner
for Field Operations

cc: Opposing co-counsel



Department of Justice

FOR IMMEDIATE RELEASE
Friday, March 24, 2000
WWW.USDOJ.GOV

AG
(202) 616-2777
TDD (202) 514-1888

Statement by Attorney General Janet Reno
on the Elian Gonzalez Case

"As I said earlier this week, our goal is to reunite Elian with his father in a fair, prompt and orderly manner. From the beginning, we have been mindful of the fact that at the center of this case is a six year old boy who has been through a terrible ordeal. We are concerned for him and will continue to try to resolve this matter in a way that avoids additional trauma to him.

"Earlier this week, Federal District Court Judge K. Michael Moore sustained our judgment that Elian should be reunited with his father. We have been willing to postpone the reunion while the district court considered the case, but we are not willing to wait through an open-ended appeals process that could prolong the separation of this child from his father. We agree with Judge Moore that "each passing day is another day lost between Juan Gonzalez and his son," and we cannot risk the harm that a prolonged separation might create.

"That is why we have proposed a solution that allows Elian's Miami relatives adequate opportunity to appeal their case, while working to achieve a reunion between Elian and his father.

"Yesterday, we asked the relatives to agree to an expedited appeals schedule, and we also asked them to commit to quickly returning Elian to his father if their appeal does not prevail. As of this moment, they have not agreed to comply with these terms.

"We will continue to try to reach an agreement with Elian's Miami relatives that meets these objectives. To that end, we have sent their attorneys another letter this evening setting forth the next steps.

"A great strength of the United States is that we are a Nation of laws and of respect for the law. I hope that all in the community will work together to uphold our laws and help make an orderly process possible."

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MAR. 25. 2000 6:37AM

NO. 863 P.2/7

COFFEY, DIAZ & O'NAGHTEN, L.L.P.SUITE 200 GRAND BAY PLAZA
2885 SOUTH BAYSHORE DRIVE
MIAMI, FLORIDA 33133TELEPHONE (305) 265-0800, EXT.: 101
TELECOPIER (305) 265-0257
E-MAIL: KC@abogadostia.com

KENDALL COFFEY

March 24, 2000

BY FACSIMILE TRANSMISSION AND FIRST-CLASS MAILDavid J. Kline, Deputy Director
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
Post Office Box 878, Ben Franklin Station
Washington, D.C. 20044RE: Eljan Gonzalez v. Reno, et al.; Case No. 00-0206-CIV

Dear Mr. Kline:

Receipt is acknowledged of your letter faxed to my office at roughly 5:30 P.M. yesterday demanding a response by noon today. Because the letter presents the INS' latest scenario for judicial resolution of the case of six-year old Elian Gonzalez, it may be productive to review briefly several such positions by the INS in the past.

Following Elian's tragic ordeal and miraculous arrival at our shores, the INS publicly announced its position that issues of Elian's custody should be determined in the family courts of our state judicial system. This position was not only sensible; it comported with the law. Indeed, as the leading judicial decisions have firmly established, the INS is not an agency with competency or expertise in assessing the best interests of minor children. Precisely for that reason, federal courts have typically deferred to state family courts when the needs and welfare of children are to be defined.

For reasons never adequately explained, after announcing its adherence to the tradition of relying on state family courts concerning children's issues, the INS abruptly reversed fields in the case of Elian. Instead of affording respect for the state judicial process, the INS refused to participate in those proceedings and opted to announce essentially that it would ignore any decision of Florida's judiciary.

Following the INS' insistence that any judicial remedy would have to be pursued in federal court, the Lazaro Gonzalez family proceeded to the U.S. District Court in the Southern District of Florida. Once again, however, the INS acted energetically to close the court house doors to a six-year-old child. Arguing lack of jurisdiction, lack of standing and lack of any meaningful judicial

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
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right to revisit INS decisions, the INS contended that Elian was not entitled to a day in federal court on the issues of his best interests and his right to remain in this country. As you know, while losing on the first two issues, the INS nonetheless prevailed on the third ground as Judge Moore held, in substance, that Elian's fate is to be finally determined by the INS, not a federal court.

With the court house closed to Elian a second time, the parties confront further proceedings to resolve whether this child's cause, paid for with the life of his beloved mother, deserves even a chance to be heard and considered. Like you, we share the hope of mutual approach so that "those on each side of the litigation place the interests of Elian Gonzalez above all others." We also share the desire for a prompt and fairly considered resolution of this case. Toward that end, we propose a framework for a final adjudication that will operate far more promptly than any envisioned in your letter. At the same time, the structure we propose is one that truly addresses the "interests of Elian Gonzalez," a reality that has not been yet adjudicated through the purely legal paper exchanges between lawyers to date. Indeed, while no court or other forum of adjudication has yet made any determination of the best interests of this child, the need for addressing that issue remains paramount. So clear is the primacy of this issue that Vice President Gore and Texas Governor Bush, the Democratic and Republican candidates for President of the United States, both agree that there should be a day in court to decide what is in the best interests of this child and whether he should remain in the United States.

Accordingly, we submit that starting a week from Monday, proceedings should be conducted to review and determine once and for all whether, based on the best interests of the child, Elian should continue the recovery and healing process that is now underway. In that proceeding, critical issues could be considered that have never been evaluated before as part of an analysis by the INS, the Department of Justice or any court. Examples of such information include reports by expert child psychologists who have testified under oath that the child faces substantial risk of serious psychological harm if forcibly removed to Cuba at this time. All of us are aware of the traumatic ordeal of this small child whose mother died to win him a chance at freedom and who then drifted alone on an inner tube for some fifty hours before being rescued by fishermen. The potential for long-term, even permanent damage from such an intensely traumatic experience remains a grave concern. Equally clear is the fact that the subsequent bonding with a maternal figure in his life, Marisleyis Gonzalez, has been an integral part of a healing process that, according to experts, cannot be disrupted at this time without great risk of injury to Elian.

Just as these key circumstances have never been part of the decision-making by the INS, also missing is any assessment of Elian's future in Cuba. Will he be in a healthy, stable household receiving urgently needed and continuing psychological care, or would he, whatever may be the father's wishes, be subject to control by the government that would inevitably include indoctrination, brain washing and political exploitation in accordance with the wishes of the regime in Cuba? In any evaluation of a child's interest in our country, the issues of present and potential psychological harm as well as the future environment awaiting a child are closely studied in order to do what is

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COFFEY, DIAZ O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
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right for a child. And yet, remarkably, the INS has never done these things in the case of Elian. The framework we propose would permit that critically needed evaluation finally to take place.

As part of assessing the interests of the child, the wishes of the biological father are, of course, significant. We would readily agree to permit the Washington law firm of Williams & Connolly, along with their client, Juan Miguel Gonzalez, to appear in the adjudication process to present evidence on all relevant issues. Indeed, the participation of counsel for the father will be helpful in several respects. In this way, the father's lawyers could help address and potentially respond to troubling evidence that the father has been physically and psychologically abusive in the past, has a history of alcohol abuse, and has lied about matters ranging from the character of the stepfather who saved Elian's life to the father's own desires to leave Cuba and come to Miami. These are issues that would always be considered in any fair-minded evaluation of a child's interests in our country. Also a factor to be at least considered are the consistent and strong feelings of Elian himself who desperately wants to remain here, nurtured by a loving and protective family, and in fulfillment of his mother's dying wish. All these are matters which should be considered before Elian's fate can be fairly determined and irretrievably transformed. For obvious reasons, it is a process that is demanded by any basic notion of fairness and compassion.

In structuring a framework for this determination, the issues would include the matters described in this letter, especially the risks of psychological harm to Elian, as well as the question of his legal right to remain in this country. The family and the INS would agree to abide by the judgment of the neutral decision maker and forego any avenues of appeal whatsoever. Thus, we envision that, in its entirety, this process could be completed within two weeks. Stated simply, if the INS would agree at last to provide a day in court to this small child, the result would be not only a fair determination of what's right for Elian but a much faster resolution than is possible through further court battles.¹ While there are various approaches to selecting a fact-finder for what would amount to a binding arbitration, we are prepared to work immediately and responsively with any proposal the INS would suggest. By way of example, local individuals could include former Independent Counsel and Appellate Judge Daniel S. Pearson or former ABA President Chesterfield Smith. Should you prefer an arbitrator who is not from South Florida, names to discuss could include former Senators Bob Dole and George Mitchell as well as distinguished former family law judges. Due to the urgent time constraints imposed by the INS letter, we have had no opportunity to speak to any potential arbitrator. We are confident, though, that a neutral and highly respected arbitrator could be very promptly identified and agreed to by the parties if there is a will to do so.

¹Even under the scenario of the INS' ultimatum, the parties cannot control when an appellate court might hear oral argument or render its opinion. These processes are typically concluded months after all the briefs are filed. Moreover, should either side seek Supreme Court review, the Court's timetable cannot be predetermined, even by the INS.

MAR. 25, 2000 6:39AM

NO. 863

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COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
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In the event a dramatically expedited proceeding to provide a real day in court for Elian will not be considered by the INS, we turn to the pending appeal. Through this process we seek a ruling that, before forcibly removing Elian to Cuba, the INS must allow a chance for fair consideration of his asylum claim, that is, of his right to remain in this country. To a substantial extent, this appeal will center on the statutory mandate of U.S.C. §1158(a) concerning asylum rights for "Any alien...irrespective of the alien's status..." Stated simply, we believe that a six-year-old child also counts as "any alien." Indeed, your own agency's official position is that, "There are no age-based restrictions on applying for asylum." (Bo Cooper Memorandum, January 3, 2000) We agree with that premise, and intend to emphasize that point during the appeal. Moreover, as Judge Moore himself asked during the hearing, "Where does it say in the statute, 'But if you are under 6'?" (Hearing Transcript at 84).

We recognize, of course, that ultimately, the District Court found that "any alien" was "evidently not intended by Congress literally to include all aliens." (Order, at 45) Nonetheless, as reflected by the INS' own position, the district judge's own questions, and the language of the statute itself, the issue of the appeal, whether "any alien" includes Elian Gonzalez, is obviously an extremely substantial one. And yet, yesterday, you gave an ultimatum with an effect that could only reduce significantly our ability to present fairly these issues. Ironically, while condemned killers in our society enjoy appellate rights that ordinarily exceed ten years, the INS would now impose a timetable for submitting legal papers on behalf of Elian that totals ten days. This is truly troubling because there is no evidence in this case showing that Elian will be harmed by continuing to stay here during a normal appeal period. To the contrary, all the expert analysis on record compellingly demonstrates that he faces great harm if abruptly removed.

As a result, it is evident that the likely result of the INS' ultimatum is to minimize Elian's appellate rights and negatively impact his chances for a successful outcome. This is especially apparent concerning the five day ultimatum for receiving an appellate decision, researching all applicable issues and case law, drafting, finalizing, presenting and filing a petition for review before the United States Supreme Court. The five day demand for limiting a process that, according to court rules, should take ninety days, is a drastic and unconscionable impairment of Elian's rights.

We are thus deeply troubled by the unjustified insistence and accompanying threats directed at drastically diminishing the appellate rights of a vulnerable child. We believe that if the speediest possible resolution is your objective, you can and should agree to the two weeks, "no appeals" process that we advocate for concluding all issues relevant to this matter. If a fair and considered determination of the pending federal judicial litigation is your goal, the coercive and dramatic reduction of Elian's appellate rights cannot be reconciled with any thesis of fairness. Instead, the likely result of the INS' ultimatum would be to create, at most, a perception of meaningful appellate process while at the same time ensuring a reality of an exercise of legal futility. Thus, just as the federal district court case was never a true day in court for Elian's best interests, but rather an acknowledgment of the INS' broad discretion, your pre-conditions would transform appellate

COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
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proceedings into a matter of form rather than the substance of any meaningful right to an appeal.

Notwithstanding the momentous issues and concerns implicated by this appeal, I will be working, along with our legal team, day and night so that the initial brief is filed no later than April 3rd, 2000, and earlier, if at all possible. I will be filing a reply brief within five days of faxed receipt of the INS answer brief and, depending on the scope of issues presented by the INS, we may be able to file sooner. I make these assurances because, as a result of Judge Moore's ruling, we need to move as expeditiously as possible through the appellate process. In that fashion, we seek to secure an asylum hearing so that we can resolve Elian's status and end the months of anxiety for our clients. We will, as I have said before, not oppose acceleration of the appeal. Moreover, assuming we prevail, we believe that it is appropriate for INS to proceed within ten days thereafter to conduct an asylum hearing.

Following the rendition of the appellate decision and should either side determine that Supreme Court review may be warranted in light of the extraordinary circumstances of this case, a petition for certiorari will be served within fifteen days. Indeed, no lesser amount of time is possible. In fact, we are astonished by your insistence that the ninety day period for filing a certiorari petition that all other litigants are entitled must be shrunk to five days for a proceeding to define the future of a small child. As with the appeal, in the event certiorari is sought, we will not oppose prompt acceleration of the certiorari process and will abide by any timetable that the Court directs. With respect to any other preliminary motions pending certiorari review, we believe it is proper for both sides to review what, if any, motions the INS or Elian would need to file at that point. It is obviously premature to address a scenario that neither side can predict with certainty. In any event, parties have a duty under the rules of proper procedure to discuss and attempt to work through issues before seeking extraordinary relief from the nation's highest court. We assume that if there is a decision by either side to seek Supreme Court review, an acceptable approach to addressing the attendant circumstances can be promptly developed.

Concerning your inquiry about the future actions of the family, we emphasize that the Lazaro Gonzalez family has always obeyed the laws concerning the matter of Elian and will continue to do so. Indeed, we are confident that both sides will continue to respect the law as well as the rights all of us have in our legal system.

Finally, we repeat our entreaty that the INS conduct an actual evaluation of the psychological condition of this child and of the potential for the serious harm he faces in the event of a precipitous removal to Cuba. Stepping away from our roles as lawyers and advocates, we appeal to you as individuals who are wielding the entirety of the power of the United States government, a power that could crush the fragile psyche of a little boy who has already suffered beyond human description. Frankly, we are surprised and troubled that the INS continues to refuse any psychological evaluation of Elian Gonzalez. At a minimum, before any more positions are taken in this difficult matter, we prevail upon your sense of decency and upon the Justice Department's stated goal of seeking to do

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COFFEY, DIAZ & O'NAGHTEN, L.L.P.

David J. Kline
March 24, 2000
Page 6

the right thing, especially when young children are at risk. We believe that should you undertake such an evaluation by independent and competent experts, you will at last understand the real implications and potential consequences of your projected course of action. Should you finally choose to undertake this critically needed analysis, you will, of course, have our full cooperation.

We await your response.

Sincerely,

Kendall Coffey

Kendall Coffey

MAR-23-2000 19:14

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202 616 9777

P.02/05



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

March 23, 2000

BY FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Kendall Coffey, Esq.
Coffey, Diaz & O'Naghten, L.L.P.
2655 South Bayshore Drive, Suite 200
Miami, Florida 33133

Re: Elian Gonzalez v. Reno et al. No. 00-0206-CIV

Dear Mr. Coffey:

I want to thank you and your colleagues for meeting with us on such short notice yesterday to discuss matters in light of the Court's decision to dismiss the above-captioned lawsuit.

As discussed yesterday, the principal objective of Commissioner Meissner and the Attorney General is to bring about a prompt, fair, and orderly resolution of this case in the manner most conducive to Elian's well-being. As Judge Moore stated in his decision, "each passing day is another day lost between Juan Gonzalez and his son, [and] the Court can only hope that those on each side of this litigation place the interests of Elian Gonzalez above all others." Under these circumstances, we are prepared to revoke Elian's parole into Lazaro Gonzalez's temporary care in order to carry out Commissioner Meissner's decision of January 5, 2000.

In light of the Southern District's dismissal of the lawsuit and the need, emphasized by the court, to avoid any further delay, the government would now proceed, in the ordinary course, to carry out the decision of the Commissioner that the district court sustained by effecting the immediate reunion of Elian and his father, unless Lazaro Gonzalez obtained an injunction pending appeal to change the legal status quo. As you know, a motion for

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an injunction pending appeal, while properly granted only rarely, is the recognized means within our judicial system by which Lazaro Gonzalez may seek judicial intervention if he disagrees with the district court's determination that the appellees are free to proceed with their intended course of action.

We are willing, however, to consider an alternative way of proceeding in this case so long as appellate proceedings can be completed and Elian can be reunited with his father in a timeframe comparable to what would normally be required for the Court of Appeals to rule on a request for an injunction pending appeal. Our discussions yesterday regarding a joint motion for an expedited appeal may present a framework for such an arrangement.

We propose that the parties agree in writing to request jointly, not later than tomorrow, March 24, 2000, that the Court of Appeals set an expedited briefing schedule and accelerate its consideration of your appeal, subject to the following terms and conditions:

1. Appellant's opening brief is due seven calendar days from tomorrow, March 24, 2000; appellees' answering brief is due seven calendar days from the date of service of appellant's brief; and appellant's reply brief is due three calendar days from the date of service of the answering brief. Service is to be by same-day facsimile transmission and first-class mail. Oral argument will be conducted as soon thereafter as practicable.
2. If the Eleventh Circuit panel grants the parties' joint motion for expedited briefing and consideration, appellees will not exercise their authority to revoke Elian's parole and terminate Lazaro Gonzalez's temporary care of Elian pending the court of appeals' decision on the expedited appeal. If the Eleventh Circuit panel affirms the district court, Lazaro Gonzalez and his family agree to comply with the instructions

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of the Immigration and Naturalization Service concerning Elian's transfer within three calendar days of the Eleventh Circuit panel's decision, unless appellant obtains an injunction pending the filing and disposition of a petition for a writ of certiorari in the Supreme Court. Any motion by appellant for such an injunction shall be expressly conditioned upon appellant's filing of such a certiorari petition within five calendar days of the court of appeals' decision and, if requested by appellees, shall be further expressly conditioned upon agreement by appellant to the filing of a joint motion in the Supreme Court for expedition of the consideration of the certiorari petition to the maximum extent possible.

3. In accordance with the ongoing responsibility of the INS for Elian under the Immigration and Nationality Act and implementing regulations, this agreement shall not prevent appellees from terminating Lazaro Gonzalez's temporary care of Elian in the event that the INS determines that there has been a material change of circumstances affecting Elian's appropriate placement.

We hope you will find this approach acceptable. If we are unable to reach agreement, the government will make arrangements to implement Commissioner Meissner's decision as described above. Please advise us as to your position not later than 12:00 p.m. tomorrow, March 24, 2000.

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MAR-23-2000 19:15

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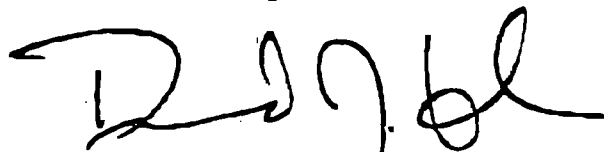
202 616 9777

P.05/05

-4-

We thank you for your continued professionalism and for your willingness to respond promptly.

Sincerely,



DAVID J. KLINE

Deputy Director

Office of Immigration Litigation

Civil Division

U.S. Department of Justice

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

(202) 616-4900 (telephone)

(202) 616-4948 (facsimile)

cc: opposing co-counsel



**U.S. DEPARTMENT OF STATE
WASHINGTON, D.C.**

DATE: 03/21/00

TO: Maria Echaveste

FROM: Lula Rodríguez
Deputy Assistant Secretary of State
Bureau of Public Affairs

FAX: 202-647-3344

PHONE: 202-647-6088

MESSAGE: _____

NUMBER OF PAGES (INCLUDING COVER SHEET): 2

Miami Herald: Anti-Castro group wants full use of boat

CUBA

Published Saturday, March 18, 2000, in the Miami Herald

Anti-Castro group wants full use of boat

BY JAY WEAVER
jweaver@herald.com

Anti-Castro activist Ramon Saul Sanchez met Friday with federal officials in an effort to settle a simmering dispute over the government's seizure of his Cuban exile group's boat in December 1998.

The U.S. government returned the fishing boat to the Democracy Movement in May 1999 on a temporary basis. Federal officials might allow the group to keep the boat permanently, as long as Sanchez agrees not to use the vessel, named Human Rights, for protests in Cuban territorial waters.

On Dec. 10, 1998, the U.S. Coast Guard confiscated the 35-foot boat just south of Key West because its crew was headed to Cuba without seeking permission. Seven group members said they had planned to sail to the island to distribute copies of the Universal Declaration of Human Rights.

Sanchez, whose 20-day water-only hunger strike secured the temporary release of the boat, said he wants the boat back permanently. He also challenges the Clinton administration's establishment of a "security zone" around most of the Florida coast.

The Coast Guard can ask boaters in all Florida ports, except in the Panhandle, if they are planning to go to Cuba, and can detain or seize their boat if they plan to do so in violation of U.S. or Cuban law.

Sanchez said the presidential order might be meant to curb unauthorized forays into Cuban waters, but it's really aimed at the Democracy Movement. In late May or early June, his group plans to hold a protest against the policy -- involving boats, trucks and planes -- on Biscayne Bay.

"It's a statement we want to send to the president of the United States," Sanchez said. "We feel this selective enforcement violates human rights."

His group is known for organizing protest flotillas in the Straits of Florida against the Cuban government.

Sanchez's lawyer, Joseph Geller, argues the policy is illegal on constitutional grounds regarding prior restraint and self-incrimination.

"We want to preserve the right of the Democracy Movement to protest against the illegal Castro government," Geller said.

Another settlement conference is set for April 4.

Maria
Need to talk to you about this
Julia



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News Release

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of the Churches of Christ
in the USA

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30NCC3/21/2000

FOR IMMEDIATE RELEASE

NCC GENERAL SECRETARY WELCOMES RULING IN ELIAN'S CASE

March 21, 2000, NEW YORK CITY – “Delighted but not surprised” at a federal judge’s ruling that only the U.S. attorney general can grant asylum to Elian Gonzalez, National Council of Churches General Secretary Dr. Bob Edgar today said, “I only wish it had come sooner.”

“Elian should have been home before Christmas,” Dr. Edgar said. “I urge the Immigration and Naturalization Service to move quickly in returning Elian to his father, grandparents and great-grandmother.” Dr. Edgar added that he has left a message for I.N.S. Commissioner Doris Meissner indicating that the National Council of Churches stands “ready to help, if needed.”

The NCC and Cuban Council of Churches have been working since December – at first quietly and then publicly – for six-year-old Elian’s return to his father and extended family in Cardenas, Cuba. “If a parent is loving, caring and not abusive, a child should be with his or her parent, and Juan Miguel Gonzalez is a loving father,” Dr. Edgar said.

The Council’s efforts on Elian’s behalf were particularly intense and time-consuming in January, when an NCC delegation visited Elian’s family in Cuba (Jan. 2-5) and then hosted Elian’s grandmothers during their mid-January U.S. visit. “It was worth it,” Dr. Edgar said, putting the NCC’s efforts on Elian’s behalf in the context of the ecumenical body’s “commitment to and compassion for all children, whether they are in Mozambique, Bangladesh or held in a house in Miami.”

Among lessons from the project: “The federal government needs to move more quickly, and there are limits to what governments can do. People-to-people efforts often bear more fruit,” Dr. Edgar said.

He said the NCC will continue to work in collaboration with the Cuban Council of Churches for normalization of relations between the United States and Cuba.

-end-

News Release

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11NCC2/10/2000

Some Frequently Asked Questions About The National Council of Churches and the Elian Gonzalez Case

Note to Reporters and Editors: The NCC prepared this Q&A primarily for its own constituencies, then saw its value for our media contacts, too. We hope you'll keep it in your "Elian file." It is meant simply to summarize the facts of our involvement to date in efforts to ease Elian's return home, NOT to hint that something new is in the works! The NCC remains ready to help further if needed, but for the moment we are on "standby status" with nothing new to report.

How did the NCC become involved in the Elian Gonzalez case?

In early December 1999, the NCC received an urgent request from our Christian partner in Cuba, the Cuban Council of Churches, to work with them to obtain the release and return of Elian to his father, grandmothers and extended family in Cuba. We agreed that Elian belongs with his father, Juan Miguel Gonzalez, given that he is a fit parent.

Alarmed that the United States was not returning the boy quickly and automatically to his father and that a fundamentally humanitarian concern was becoming increasingly politicized, the two Councils proposed that they serve as intermediaries in the physical return of Elian to his father. The Cuban government agreed to the plan and U.S. officials quietly expressed interest.

This kind of partner relationship with the Cuban Council of Churches is characteristic of our work with ecumenical councils and other church bodies in more than 80 countries around the world. As people who share a common faith that crosses national boundaries, we and our partners strive to be accountable to each other. That means that the NCC does not make unilateral decisions that affect our partners in another country. On the contrary, we consult with our partners on issues they face and ask how they would like us to be involved. Our partners are on the ground; they know their own churches and their own country. They also have to live with the consequences of what the NCC does in the name of the churches. Therefore, we take their counsel seriously before acting or speaking on issues that have an impact on them.

-more-

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How have you worked with the Cuban Council of Churches in the past?

The NCC has a long relationship with the Cuban Council that predates the revolution in Cuba. We have worked to maintain contacts with Christians there through difficult days and through many changes as the relationship between church and state evolves in Cuba. We rejoiced with our Cuban partners when Christmas was openly observed in Cuba in 1997. We celebrated with them when, in June 1999, the Cuban Council and its member Protestant churches were able to hold a month-long national evangelical festival that was open to the public. And we have supported the Cuban Council with humanitarian aid when in recent years churches in Cuba were granted a new role in health care, elder care and other social services.

When NCC delegations have visited Cuba to see these projects, they have been dismayed by the suffering of the Cuban people that is a result of a four-decade-long embargo against Cuba. The embargo is even harsher than sanctions currently placed on Libya or Iraq. Our response has been three-fold. We have pressed for a normalization of U.S.-Cuba relations that would ease human need in Cuba and that would allow for the reunification of Cuban families. We have sent humanitarian aid shipments to Cuba since 1992, meeting stringent U.S. licensing requirements to send 305 tons of food, medicine, medical equipment, school supplies and other desperately needed goods. And we have prayed with and for the people of Cuba. We hope that our efforts will hasten the day when no Cuban child and no Cuban family faces the horror that Elian Gonzalez experienced on his dangerous journey from Cuba to the U.S.

What activities did you carry out in your role as an intermediary in Elian's case?

The Cuban Council of Churches asked the NCC to visit Elian's father and extended family in Cardenas, Cuba. In response, a three-member NCC team made such a visit January 2-5. The NCC's new general secretary, the Rev. Dr. Robert W. Edgar, who had taken office one day before the trip, requested that his immediate predecessor, the Rev. Dr. Joan Brown Campbell, lead the NCC team to Cuba on his behalf.

Members of the team visited with Elian's father, grandmothers, great grandmother and other members of his extended family. Over the course of three days, they spent eight hours with the family in settings that included Juan Miguel's home, where Elian stayed; Elian's school, and a local ecumenical center. Dr. Campbell shared her impressions with both U.S. and Cuban government officials and with the public, characterizing the family as "loving and caring."

As the NCC team returned to the United States, the INS announced its ruling that Elian should be returned to his father in Cuba by January 14. But further delays prompted the two councils to support a visit of Elian's grandmothers, Raquel Rodriguez and Mariela Quintana, to the United States. (Because of the father's concern for his own physical safety and his fear of legal entanglement, the grandmothers—who were among Elian's primary caregivers—offered to come on the family's behalf.)

-more-

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While the grandmothers were disappointed in their hope to take Elian home with them, they did accomplish other goals of their Jan. 20-30 mission. They pressed their case with Attorney General Janet Reno and INS Commissioner Doris Meissner in a Jan. 22 meeting in Washington, D.C. They spoke about their love for Elian to Democratic and Republican congressional representatives and to the American public. And—after days of negotiations involving the INS and Elian's Miami relatives—they saw their grandson in the Miami home of Sr. Jeanne O'Laughlin, president of Barry University, who had pledged to provide a neutral place for a supervised visit.

The Council provided pastoral presence and support for the grandmothers throughout their visit and the Council continues to be on call in efforts to return Elian to his father.

What is your response to Sister Jeanne's public statements, following the brief reunion of the grandmothers and Elian, in which she took the side of the Miami relatives who wish to keep Elian in the U.S.?

We were deeply disappointed that Sister Jeanne abandoned the role to which she had been called and to which she agreed—that of providing a neutral meeting place for Elian and his grandmothers. The meeting place itself proved to be far from neutral. In the final hour before the long-awaited visit, the grandmothers were advised that a group with a strong anti-Castro position had moved into the house right next to Sister Jeanne's and could survey her house from a balcony. The grandmothers had to delay their visit until the group was removed. Even as they approached Sister Jeanne's home by car, they passed through streets filled with demonstrators shouting, "He will never go back!"

Following the visit, Sister Jeanne made public statements backing the Miami relatives in their fight to keep Elian in the U.S. We believe those statements were inappropriate for someone who had taken on the role of neutral mediator. We also point out that her statements were based on very limited contact with these two courageous grandmothers. The grandmothers were graciously received in her home, but Sister Jean was shuttling between the groups of relatives and was busy with multiple responsibilities related to the visit. While Sister Jeanne makes much of witnessing one of Elian's Miami cousins acting in a motherly way, we contend that such a relationship cannot begin to compare with the bond between parent and child. Elian can best begin to grieve his great losses and to heal with the loving support of the family he has known from birth.

What have you said about the move among some in Congress to confer U.S. citizenship on Elian, with the aim of removing him from INS jurisdiction?

The NCC shares the grandmothers' anguish and concern about legislative efforts in Congress that serve to further delay Elian's return to his father. Elian's paternal grandmother, Mariela Quintana, on January 21, said, "Nobody outside has the right to make him (Elián) an American citizen. He was born in Cuba, lives in Cuba, he's a Cuban. No one, even Congress or the President, can change his status."

-more-

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The NCC's work to facilitate the reunification of Elian Gonzalez with his father and grandparents in Cuba has received much publicity. How is the Council assisting other families who wish to be reunified?

The Council, its member communions and their congregations help to resettle thousands of uprooted people in U.S. communities every year. For example, in 1999, we assisted more than 6,700 newcomers representing more than 30 nationalities. In general, about 80 percent of these cases are ones in which families are reunified. We are concerned for all families everywhere who are separated by conflicts between governments and we work for their reunification in many ways.

In recent years, our U.S. resettlement caseload has included approximately 2,000 Cubans annually. We are authorized to assist those Cubans who come to us through the U.S. Department of State Resettlement Program or the Department of Justice Cuban/Haitian Program. Decisions about who will be accepted for resettlement in the United States are made by the U.S. government, not by the NCC. Decisions about who will receive exit permits from Cuba are made by the Cuban government, not the NCC. Working within legitimate U.S. government programs, the Council makes great efforts to assist Cuban refugees and has done so for decades. No doubt there are people in the Cuban American community who oppose our stand on the Elian Gonzalez case who were themselves assisted by the Council.

While we must abide by the decisions of government in our resettlement work, we are advocates for a more humane U.S. immigration policy. As a U.S.-based organization, we participate in legislative discussions and public forums to carry the message of welcome and refugee protection to Congress and others.

Some have cited the human rights record of the Cuban government as a reason to keep Elian in the U.S. How do you respond to that?

The NCC would never work to repatriate a child who would face persecution on his or her return. In fact as part of our work for refugees that is described above, we work on a daily basis to protect asylum seekers who arrive in the U.S., including those from Cuba. We provide legal assistance and other help to persons who have fled their homelands because they have been persecuted or have grounds to fear persecution. In the Gonzalez case, it is clear that Elian will not face persecution if he is returned to Cuba.

-more-

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In addition to helping asylum seekers, how do you approach human rights issues?

The National Council of Churches actively promotes the United Nations' Universal Declaration of Human Rights and, in its role as a faith-based NGO, it is committed to working for the human rights of all persons. When asked to act on a particular case of human rights violations, the Council takes the course that it believes will be most effective. In some cases, this means a public resolution from our highest policy making body. Over the years, the NCC's General Assembly and its predecessor bodies have adopted over 130 resolutions denouncing human rights violations in many countries. Generally, these resolutions include a provision that urges the U.S. government to take action as well. In other cases, a low-profile effort can be more productive. The NCC has worked behind the scenes in countless situations to press the case of prisoners of conscience, of groups whose religious freedoms have been infringed and others whose human rights have been violated. Because of the sensitive nature of this work, many NCC successes in redressing human rights violations must go unreported.

Do you often play a role in international custody cases?

No, this is a rare case, in which we received a special request from a partner ecumenical council.

While our focus is on what is best for Elian, we also recognize that his case may have an impact on other international custody disputes and we are concerned about that. If Elian is kept in the United States despite the fact that he has a loving father in Cuba, there will be implications for the many parents in the U.S. whose children have been abducted by a non-custodial parent to another country. In such cases, the U.S. State Department can request that children be returned to the place "where they habitually reside," based on provisions of the Hague Convention on the Civil Aspects of International Child Abduction. The U.S. and many other countries have signed this convention. But if the United States sets a poor example by flouting the convention in the case of Elian Gonzalez, it may be much harder for parents in the United States to get their children back.

While we are not in a position to assist families that are embroiled in custody disputes, there are specialized agencies to which we can refer them. We pray for all families and all children who are caught in these struggles.

How was the grandmothers' trip paid for?

All but one flight (including domestic and international flights) was paid for by private donations. The Jan. 22 round trip flight (New York-Washington-New York) was paid for by the NCC at a cost comparable to commercial air tickets (\$3,100 for seven passengers). The grandmothers stayed in a private residence in New York City, as did the Rev. Oden Marichal, president of the Cuban Council of Churches, who accompanied them. The Cuban Interests Section took on responsibility for the grandmothers' schedule beginning with their return on January 26 from Miami to Washington, D.C., and paid for their travel-related expenses other than air fare for that portion of the trip.

-end-

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The Economist

March 04, 2000 , U.S. Edition

The Curse of Elian

miami

THREE months after Elian Gonzalez, a six-year-old Cuban boy, was rescued from the sea off Miami, his story resembles the fanciful tele-novelas that Latinos love to watch. The bitter child-custody case between the Immigration and Naturalisation Service (INS), which wants to send Elian back to his father in Cuba, and his relatives in Miami, who want him to be given political asylum, has now been through six judges of various sorts. Great-uncles have been rushed to hospital with chest pains; nuns have changed their stories; and one of the INS's main men in Miami has been arrested on charges that he spied for Cuba.

Call it "The Curse of Elian". But these comic undertones distract attention from the weighty issues involved in the affair. The most obvious, and tragic, surround the fate of the wretched Elian himself. But there is also a growing sense that the story is not playing out in the way that Miami's hardline Cuban-American leaders had intended.

A new federal judge is due to hear Elian's political-asylum case on March 9th. Bernard Perlmutter, a family-law expert at the University of Miami, thinks the Miami relatives' case looks extremely weak. Elian's father has been deemed a fit parent by INS agents who interviewed him in Cuba, and there is no legal precedent for denying parental rights over a child of such tender years.

If the judge does indeed send him back, this will be a further blow for the Miami Cubans' political leaders. With Fidel Castro poised to outlast his ninth American president, Elian's case was supposed to reinvigorate anti-Castro feeling in the United States. In fact, opinion polls say that 67% of Americans feel that he should be sent home.

This reflects a general softening of attitudes in the United States towards Mr Castro's Cuba. The spy case aside, American-Cuban relations have been gradually defrosting. Talk of ending the 30-year economic embargo is no longer unrealistic. Travel restrictions have been loosened. The number of direct charter flights to Havana has increased, as have family remittances. American academics and students now travel for study to Cuba. Cuban musicians tour the United States. The two countries' governments co-operate on issues such as immigration and drugs.

The furore over Elian has caused a few flickerings. The Clinton administration has temporarily shelved a plan to ease food sales to Cuba. But, in most other respects, both governments have kept their heads. Last month Cuba permitted an American trade fair in Havana, the first of its kind in four decades, to go ahead. The Clinton administration has backed the Cuban government's demand to have the boy returned. Even the spy business has not had as explosive an effect as it might have done.

Some people think the handling of the Elian affair reveals a new maturity on both sides. In the past, "if there's been a problem in one area, everything else is shut down," says John Kavulich, director of the US-Cuba Trade and Economic Council. "Now everyone is determined that everything around this child continues uninterrupted."

Instead of driving a wedge between Washington and Havana, the Elian case may end up driving one between Washington and Miami. An attempt in Congress in February to introduce legislation to make Elian an instant American citizen fell flat on its face. "There's no one left in this city who has any sympathy for the Miami Cubans after what they have done to that boy," says Robert White, the head of the Washington-based Centre for International Policy.

More broadly, the Elian affair has led people to wonder whether the hardline anti-Castro Cubans in Miami are losing their clout. In the days when Jorge Mas Canosa, a telecommunications magnate, ran the Cuban American National Foundation (CANF), the largest exile organisation, few politicians questioned his will. But since he died in 1997 much has changed. The CANF, which models itself on the pro-Israel lobby, is still a formidable fund-raising machine. But its reputation has suffered from allegations that its members were involved in a series of mini-bombings in Havana in 1998, and other anti-Castro shenanigans. The CANF's new leader, Mr Mas Canosa's

son, Jorge Mas Jr, now spends more of his time with the family business.

The battle over Elian has been led by other groups, such as the Democracy Movement and Brothers to the Rescue. But their street protests and traffic disruptions have alienated many of Miami's non-Cubans, and even some of its Cubans.

The gamble that failed

Miami is changing. Latinos are expected to make up 69% of the population of Miami-Dade County by 2020. But most of the additions will either not come from Cuba at all, or will be second- and third-generation Cuban-Americans who have been educated in the United States and feel less vengeful about Mr Castro than their parents. The young mayor of Miami-Dade, Alex Penelas, a Democrat, makes dutiful noises about Elian; but he chiefly wants to build a modern American city, not depose Mr Castro.

Cuban-Americans are a minority even in Miami-Dade and barely a 20th of Florida's electorate (though that can still make a difference in a close race). By separating a six-year-old boy from his father, the hardliners may have overreached themselves. If so, the irony is that they will have helped Mr Castro.

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

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From:

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Comments: from Oliver Kellman on behalf of Congresswoman
Sheila Jackson Lee

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18TH DISTRICT, TEXAS

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January 25, 2000

William Jefferson Clinton
The President
1600 Pennsylvania Avenue
Washington, DC 20500

VIA FAX AND HAND
DELIVERED

Dear President Clinton:

As the Ranking Member of the House Subcommittee on Immigration, I am writing to applaud the decision that has been made by the Department of Justice to affirm the INS decision to act within the best interests of the child in the case of Elian Gonzalez. I also applaud the decision of the INS that compels the Miami relatives of Elian to bring him to a neutral site so that he may reunite with his grandmothers.

As you know, today I have had the opportunity to meet with Elian's two grandmothers, Raquel Rodriguez and Mariela Quintana, and Members of Congress to discuss his safe return back to Cuba. By meeting with these endearing women, I want to ensure the enforcement of the INS' previous decision. It is imperative that we end the political posturing surrounding this young boy's plight. Elian Gonzalez is not an orphan and his father has not been proven to be unfit and no abuse of Elian has been found that would normally deny a natural parent custody of his child.

You may also be aware that there are several bills in the Congress that would make Elian a citizen or a legal permanent resident of the United States. After meeting with the grandmothers, I have learned that their wish is for their precious grandson to return to Cuba to be with their natural father and them. I urge you to veto any bill that would make this young boy a citizen or legal permanent resident. I also think that it is important that you meet with these women and look in their eyes, and feel their emotions in order for you to fully appreciate this issue.

I am enclosing a letter from the grandmothers given to me today directed to you Mr. President asking for your help in returning Elian to his family in Cuba.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, reading "Sheila Jackson Lee". The signature is fluid and cursive, with the first name "Sheila" being the most prominent.

Sheila Jackson Lee
Member of Congress

SJL:lcb

Enclosure: Letter to President Clinton from the Grandmothers of Elian Gonzales

La Habana, 21 de enero de 2000

*Excmo. Sr. William Clinton
Presidente
Estados Unidos de América*

Estimado Presidente:

Las dos abuelas del niño Elián González Brotons hemos venido hasta Nueva York con la esperanza de recuperarlo.

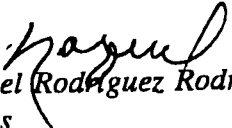
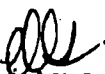
Podrá suponer usted que hacer este viaje ha significado un gran sacrificio para nuestra familia, que no se ha separado un solo instante desde el momento de la tragedia en que perdimos a una hija y hemos sido forzados a contemplar con infinito dolor el secuestro de nuestro nieto. En los últimos días los que retienen criminalmente al niño ya no nos permiten siquiera hablar con él.

Sabemos que usted, enfrentándose a grandes obstáculos, ha expresado su reconocimiento al derecho indiscutible del padre de recuperar a su hijo. Juan Miguel el padre de Eliancito, nosotras y toda la familia estamos destruidos y vivimos el horror de ver pasar el tiempo.

A pesar de que conocemos de su inmenso trabajo, le solicitamos que nos reciba aunque sea por unos minutos. De usted preferirlo, sería absolutamente confidencial.

Si nos concede ese honor, constituiría para nosotras un extraordinario aliento, que ahora o en el futuro sería muy apreciado también por el pueblo de Estados Unidos que, apegado a los valores de familia, en muy amplia mayoría es decididamente partidario de que el niño regrese junto a su padre, abuelos y demás familiares.

Puede localizarnos en la casa de la Reverenda Joan Campbell, y el contacto se haría en la forma y lugar que usted estime pertinente.


*Mariela Quintana Garrido y Raquel Rodríguez Rodríguez
Abuelas de Elián González Brotons*

NSC would prefer to say:

"I share your view
and that of many
of your colleagues
that any challenge
to the INS decision
should be resolved
in court and not
through legislation."

Jackson Lee
Draft

not cleared
yet

need the
incoming letter

Dear Sheila:

Thank you for your letter regarding the case of
Elian Gonzalez. I share your concern for the
well-being of this six-year-old boy.

As you know, the Immigration and Naturalization
Service announced on January 5 its decision that
Elian Gonzalez's father, Juan Gonzalez, has the
sole legal authority to speak for his son in
immigration matters, and that the boy should be
reunited with his father. INS and the
Department of Justice are working hard to carry
out the INS decision, which is currently being
challenged in federal court.

Throughout this process, I have tried to ensure
that this decision would be made according to
the governing law and procedures, and not
politics. I hope that the challenge to the INS
decision will be decided in court, and not
through legislation.

I want to thank you for enclosing the letter
from Elian's grandmothers. [I am pleased that
they had an opportunity during their stay to
meet with the Attorney General and INS
Commissioner, who are handling this matter for
my Administration.]

Again, thank you for sharing with me your
concerns about this compelling case.

Sincerely,

Veto is handled by

Don't say
anything
about
this
veto

What
about request

Wendy says that
the two issues
are covered

And Mary
did work on
this letter

Alternative:
We will
continue
to work with
members of Congress
like you to
do everything possible
to ensure that
this matter is
resolved in court,
and not through
legislation.

RICK SWARTZ & ASSOCIATES, INC.
1869 Park Road, N.W., Washington, DC 20010
Telephone (202) 328-1313 Fax (202) 797-9856
Email: RickSwartz@aol.com

DATE:

1/27

FAX

TO:

Mama Schwartz

FROM:

TOTAL NUMBER OF PAGES INCLUDING COVER PAGE:

2

MESSAGE:

I'm giving Antonio a
little help re Ehan. How
about dinner Feb 2
I've asked Albert Torquez's
wife, who's checking Albert's
Schedule.

Best

Leslie

DONE

I'd like to do
this - call him
and offer



William C. Velásquez Institute

January 25, 2000

Dear Senator:

I am writing to urge you to oppose S. 1999. This legislation would award U.S. citizenship to six-year old Cuban national Elian Gonzalez in order to circumvent the Clinton Administration's decision to re-unite him with his father in Cuba. Alarming, extremist groups in south Florida are politicizing this tragic situation to the detriment of the sacred parent-child relationship, as well as recognized U.S. and international law.

Awarding Elian Gonzalez U.S. citizenship would result in giving jurisdiction to the Florida State court system, which would immediately bar Elian's return to his father. Such action would set a dangerous legal precedent. Similar circumstances occur each year with U.S. children in custody dispute cases involving U.S. parents and foreign national families. It is in our national interest to adhere to U.S. and international law regarding the right of parents to their children.

Awarding U.S. citizenship to Elian Gonzalez against the will of his sole surviving parent applies an unfair double standard. Millions of duly qualified permanent residents are mired in a two-year naturalization backlog waiting to be sworn in as U.S. citizens. And hundreds of thousands of Mexicans, Salvadorans, Guatemalans and others have been unfairly excluded from the opportunity to become U.S. permanent residents (and eventually U.S. citizens) as a result of the 1996 Immigration Act and INS misconduct during the Reagan and Bush Administrations.

U.S. Latinos do not support the position of the extremist groups in south Florida. And a silent majority of moderate Cuban Americans want to see Elian returned to his father! While recently in Miami I had the opportunity to meet with hundreds of outraged Latino community leaders, many of them Cuban-American. They spoke eloquently of the atmosphere of intimidation foisted upon them by a vocal minority of extremists.

I urge you to oppose this anti-family legislation. Support President Clinton and Attorney General Janet Reno's decision to re-unite young Elian Gonzalez with his father. Do not let these vocal extremists determine U.S. foreign policy at the expense of cherished family law.

Sincerely,

Antonio Gonzalez
President

BushGore**McCain
HatchForbes****NEWS***Published Tuesday, February 1, 2000, in the Miami Herald***Exile group forges ironic alliances****BY KAREN BRANCH**
kbranch@herald.com

The battle over granting citizenship or residency to Elian Gonzalez has highlighted a little-known fact about the Cuban American National Foundation and its links to Congress: Miami's most important exile lobbying group and its political action committee often are more generous with Democrats than Republicans.

In an irony of historical proportions, the foundation has been a major supporter of two nephews of President John F. Kennedy — who earned the hostility of exiles by denying air support to the ill-fated Bay of Pigs invasion in 1961.

This may surprise Cuban Americans in Miami, most of whom are Republicans.

But foundation folks say it just makes political sense.

"It should come as no surprise there are many Democrats supportive of our issues, foundation spokesman Fernando Rojas said. "That's a reflection of our efforts to make sure that Cuba policy is bipartisan in nature.

Those efforts are also reflected in contributions by the Free Cuba PAC, the political fund-raising arm of the foundation. The organization spent \$53,500 on Democrats in the 1997-98 congressional campaign cycle, compared with \$49,500 on Republicans.

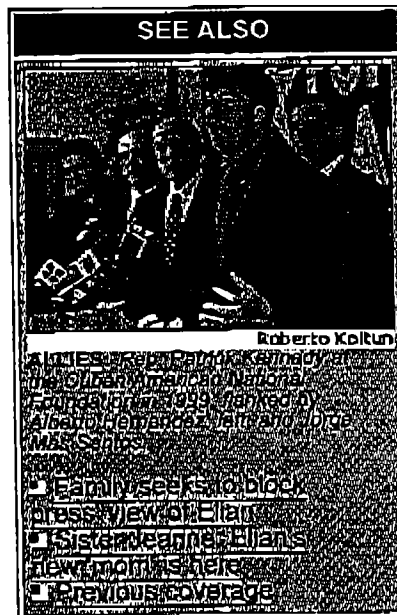
In the 1999-2000 cycle reported so far, the balance is tilted even more toward Democrats. Fifty-five percent of the PAC donations (\$21,000) went to congressional Democrats, with 45 percent (\$17,000) to Republicans.

Many of the foundation's Democratic allies are congressional members from Florida and New Jersey, home to large Cuban exile populations that are prolific voters. They include Sen. Bob Graham, D-Fla., and Sen. Robert Torricelli, D-N.J. — who signed on as sponsors to Florida Republican Sen. Connie Mack's bill to grant Elian U.S. citizenship.

ALLY OF FOUNDATION

Yet the foundation, too, has snagged less obvious champions for anti-Castro causes. The most acclaimed is Rep. Patrick Kennedy, D-R.I., son of Cuban embargo opponent Sen. Edward Kennedy, D-Mass.

The younger Kennedy is co-sponsoring a bill by U.S. Rep. Robert Menendez — a Cuban-American Democrat from New Jersey — to grant permanent residency to the 6-year-old.



Please fax to

- Wendy Sherman
- Susan Snyder
- Mike Guest
- Snowfield
- Shapiro
- Echevarria
- Valenzuela
- Maria
- Orosio
- Willie
- Jensen
- Julia

J.H.I.

They, along with Rep. Peter Deutsch, a Broward Democrat who also represents parts of exile-abundant Miami-Dade, signed letters to President Clinton and Attorney General Janet Reno to urge that they postpone Elian's return.

The historical irony of the Kennedys' support is one acknowledged by the foundation, whose founder, the late Jorge Mas Canosa, was a Bay of Pigs veteran.

"When you mention the name Kennedy, you're reminded of the early days of the struggle against Fidel Castro and that promise that was made by that administration to restore democracy to Cuba, which remains unfulfilled, Rojas said. "But Patrick Kennedy was one of the first to try to reach out to the community — even visiting at one point with the Bay of Pigs veterans.

"What is interesting is here you have a new generation of Kennedys working side by side with another generation of Cuban Americans to try to fulfill a fundamental desire on our part and, indeed, on his part, to bring about freedom in Cuba.

TIES WITH KENNEDYS

Jorge Mas Santos, now chairman of the foundation, said his father was just as close to Patrick and Joe Kennedy.

Federal contributions records show that Mas Canosa did indeed express support for the Kennedys — in personal contributions. He and his wife and sons donated \$1,450 to Patrick's 1996 reelection bid and \$1,000 for the 1997-98 cycle.

The Mas family, similar to the Free Cuba PAC, has reached into its own pockets more for Democrats than for Republicans in two of the last three congressional elections, and have so far continued that trend in the 2000 races. Only in 1996 did they give more to Republicans — \$39,250 compared with \$21,950 to Democrats.

The Mas family gave \$26,000 to Democrats and \$19,250 to Republicans in the '94 cycle, \$6,250 to Democrats and \$5,750 to Republicans for the '98 races, and \$2,000 to Democrats and \$500 to Republicans for the 2000 cycle.

ANOTHER KENNEDY

The foundation counts among its allies former U.S. Rep. Joseph P. Kennedy II, Patrick's cousin. In the 1997-98 campaign cycle, the Free Cuba PAC gave \$7,000 to Joseph's congressional campaign and \$6,500 to Patrick's.

On Nov. 1, Joe Kennedy joined the board of directors of MasTec — the telecommunications construction company chaired by Mas Santos.

"We've had a very close relationship with Joe and Patrick for many, many years. I've known them maybe seven or eight years, Mas Santos said.

"They've always been supporters of freedom for Cuba, and I think it's important that the Kennedy family — given their spot in history with the Cuba issue — be on the right side of history with those of us who want freedom and democracy for Cuba.

Patrick Kennedy did not want to discuss his relationship with the foundation. He declined an interview through spokesman Larry Berman.

"We did a press release and some letters he signed on to — and he says they speak for themselves, Berman said.

VIEW ON ELIAN

Kennedy's news release says he believes Elian's fate should be decided by U.S. courts: "Those elements are particularly necessary because of the fact there is no freedom of speech in Cuba, and therefore, we still do not know what

Elian's father truly wants in this matter.

Since his election in 1994, Kennedy, now 32, has backed the foundation agenda. He voted against congressional efforts to end TV Marti. He supported the Helms-Burton bill to tighten the U.S. trade embargo against Cuba.

The foundation released a statement by Kennedy on Helms-Burton:

"This bill is a clear statement that the American people stand arm in arm with the people of Cuba in their struggle against a repressive dictator, and that we will not back away from being partners in our common fight for freedom begun by my uncle, President Kennedy, Kennedy's statement said, referring to John F. Kennedy's imposition of the embargo in 1961.

"President Kennedy looked forward to the day Cubans would live in freedom. I share his hope for the future of Cuba and this bill will help that day come soon.

DEMOCRATIC BACKERS

Other key Democrats also have backed the foundation agenda for years.

They include Sen. Harry Reid, D-Nev., the Senate Democratic whip, who received \$7,000 in contributions from the Free Cuba PAC for the 1997-98 campaign cycle.

Sen. Joseph I. Lieberman, D-Conn., has a relationship with the foundation that can be traced to his first election in 1988. Lieberman toppled the Republican incumbent, Sen. Lowell Weicker, who as a senator had opposed efforts to create Radio Marti and advocated normalization of relations with Cuba. Weicker met with Castro during trips to Cuba in 1980 and 1983. After the last trip, he reported in financial disclosures that Castro gave him a box of cigars worth \$100.

The foundation's support of Lieberman's candidacy was inevitable:

Weicker "was literally close personal friends of Fidel Castro, Rojas said. "It was unfortunate a senator from Connecticut would vacation with Fidel Castro -- and we felt it critical to target that race.

"We established a very close relationship with Sen. Lieberman, who understood the plight of the Cuban people. Jorge Mas Canosa and he became very close friends over the years. . . . In the case of Elian, he was one of the first individuals who wanted to help with us. He's going to be a co-sponsor of the bill to grant him citizenship.

PLAN DELAYED

Despite intense lobbying efforts by the foundation and Elian's family to make the boy a U.S. citizen, the bill has received a cool reception to the fast-track effort. GOP leaders who originally expected to bring the issue up for early floor votes now have delayed the plan.

Lieberman and Torricelli also wrote a letter to Reno, a fellow Democrat, on Jan. 7, asking her to delay enforcement of a ruling by the Immigration and Naturalization Service to return Elian to Cuba by Jan. 14.

The Free Cuba PAC gave at least \$10,000 to Lieberman in the current 2000 campaign cycle -- and Mas family members have given him at least \$1,000 more. The PAC also gave \$5,000 to Sen. Charles Robb, a Virginia Democrat and a frequent supporter of foundation positions.

"He's one of the Senate's six Vietnam veterans, so he had a pretty hardline stance on communism, Robb chief of staff Tom Lehner explained.

The foundation proved its loyalty to Robb, even in 1994, when he was challenged by a Republican whose hard-line views mirrored the foundation's: Iran-contra figure Oliver North.

ROBB'S POSITION

Mas Canosa, then foundation chairman, endorsed Robb over North.

But where the sticky issue of Elian is concerned, Robb is not so disposed to take a leadership role, his chief of staff said. Indeed, even GOP leaders who were originally expected to bring up the boy's citizenship question for early floor votes now have delayed the plan until a federal judge in Miami rules on the case — despite intense lobbying efforts by the foundation and Elian's family and allies.

One day after Mack announced Robb was one of the co-sponsors of his bill to grant Elian citizenship, Lehner said it wasn't true.

“He's not on it. Mack just misspoke. This isn't as central to us as it is to the Florida delegation, said Lehner, whose boss is up for reelection this year after barely defeating North in the 1994 race. “This is not to say we might not vote for this thing. We still haven't sat down to determine a course of action.

Campaign Finance Reform, Health Care,

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News Release

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NCC1/28/2000

FOR IMMEDIATE RELEASE

NCC CONTINUES ITS PASTORAL SUPPORT OF ELIAN'S GRANDMOTHERS **NCC Remains "On Call" to Further Help to Reunite Elian with His Father, Grandparents**

January 28, 2000, NEW YORK CITY – "The National Council of Churches has not pulled back from its commitment to Elian Gonzalez's grandmothers and their mission," the Rev. Dr. Robert W. Edgar, NCC General Secretary, said today.

"The grandmothers' goal of winning their grandson's return to his father is a goal the NCC has shared since the Council got involved in early December," he said. "Indeed, we become more convinced every day that this little boy should be reunited immediately with his biological father and closest family members in Cuba."

Dr. Edgar reiterated his satisfaction that the NCC-facilitated U.S. visit of Elian's grandmothers had achieved two goals – offering them the opportunity to speak firsthand of their love for Elian and helping to arrange their visit with Elian. The grandmothers' ultimate goal – to take Elian back to Cuba with them – is yet to be realized, and the NCC remains "on call" to help, he said.

As their government's official presence in the United States, the Cuban Interests Section is assisting the grandmothers with their itinerary during their remaining days in the United States following their visit with Elian. "This is what any citizen seeking help with a matter in another country would hope for from their government," Dr. Edgar said.

The NCC continues to provide pastoral presence and support for the grandmothers in the person of the Rev. Dr. Joan Brown Campbell, the NCC's immediate past general secretary. She was co-chair with Dr. Edgar of the NCC delegation that hosted the grandmothers.

How the NCC Got Involved in Elian's Case

The National Council of Churches was approached for help in the Elian Gonzalez matter in early December by the Cuban Council of Churches – with whom it has a multifaceted relationship that began before the Cuban revolution and includes humanitarian aid, work for normalization of U.S.-Cuban relations and advocacy for greater freedom for Cuban Christians to worship, witness and serve.

Alarmed that the United States was not returning the boy quickly and automatically to his father and that a fundamentally humanitarian concern was becoming increasingly politicized, the two Councils proposed that they serve as the intermediaries in the physical

return of Elian to his father. The Cuban government agreed to the plan and U.S. officials quietly expressed interest.

But when several weeks passed without movement -- and when the INS postponed a late-December hearing in Elian's case until late January and when members of Congress began to propose a measure to grant U.S. citizenship to Elian -- the Cuban Council of Churches asked the NCC to visit Elian's father and extended family in Cardenas, Cuba. A central concern was that while Elian's Miami relatives had many spokespersons and advocates, the immediate family in Cuba had few.

Dr. Campbell and the Rev. Oscar Bolioli, the NCC's Director for Latin America and the Caribbean, accompanied by an NCC Communication Department staff member, made the trip Jan. 2-5, met the family and shared their impressions with both U.S. and Cuban government officials.

As that NCC team was en route back to the United States on Jan. 5, the INS announced its ruling that Elian should be repatriated, by Jan. 14, to his father. But further delays prompted the two church councils to support yet another "project" -- the grandmothers' visit to the United States. (Because of the father's concern for his own physical safety should he make the trip, and his fear of legal entanglement, the grandmothers -- among Elian's primary caregivers -- offered to come on the family's behalf.)

NCC's Pastoral Concern for Elian's Grandmothers, Elian, and Family

Dr. Edgar today said he remains committed to the statement he made on Jan. 8, which reads in part:

"The longer this whole process drags on, the more disconnected this small child becomes from those who have raised him and who love him. Using delaying tactics to prevent this child from going home is unseemly and it isn't fair to use him as a pawn in a political dispute.

"As a former Representative in Congress, I will use the knowledge gained through 6 terms to discover if a logical and compassionate solution can be found. This is a time when people of good will should focus on the needs of one little boy rather than on how he can be useful for some other purpose.

"I'm hopeful that this tragic situation can have a positive effect. Throughout the generations, children often have pointed the way to a new way of looking at things. The Bible says that "a little child shall lead them." Elian Gonzalez could be the catalyst for a changed relationship between the peoples of Cuba and the U.S. His safe return should mark a commitment to finding ways to be more caring and generous with each other."

Accordingly, the National Council of Churches shares the grandmothers' anguish and concern about legislative efforts in Congress that serve to further delay Elian's return to his father. Elian's paternal grandmother, Mariela Quintana, on Jan. 21 said, "Nobody outside has the right to make him (Elian) an American citizen. He was born in Cuba, lives in Cuba, he's a Cuban. No one, even Congress or the President, can change his status."

Christians in both Cuba and the United States – along with leaders in both countries' governments -- have expressed their appreciation for the efforts of the two ecumenical councils for reconciliation in a situation that has divided a family; kept Elian, a little boy who has just lost his mother, from grieving and healing properly in the bosom of his immediate family, and exacerbated tensions between the U.S. and Cuba.

"Ultimately," Dr. Edgar commented, "it is the normalization of relations between the United States and Cuba that will make unnecessary the perilous crossing by boat that cost the lives of Elian's mother and 10 others, and that puts extraordinary economic pressure on ordinary Cubans."

Dr. Campbell, who first met Elian's grandmothers on Jan. 3, has been in close contact with them ever since. She has been alongside Mrs. Quintana and Raquel Rodriguez, Elian's maternal grandmother, virtually every step along the way since she and the others from the NCC flew to Havana Jan. 20 to pick the grandmothers up for the U.S. visit.

She, along with Dr. Edgar and the Rev. Bolioli, were present for the grandmothers' meeting with U.S. Attorney General Janet Reno and INS Commissioner Doris Meissner in Washington, D.C., on Jan. 22. Along with NCC Communication Director Randy Naylor, and the Very Rev. Oden Marechal, President of the Cuban Council of Churches, those three were part of the long afternoon of negotiations (Monday, Jan. 24) at the Tamiami Airport – negotiations by phone with the Miami relatives and INS officials that failed to win the Miami relatives' agreement with the grandmothers' request that they be able to visit Elian at a neutral site.

"The Cuban Interests Section's vice consul waited outside the room until those negotiations were completed," Dr. Campbell noted. "By the time he was admitted, the grandmothers already had decided to go to Washington, D.C., to press their case with members of Congress – just as it was the grandmothers who had insisted on coming to the United States in the first place."

Dr. Campbell described the grandmothers' concern to be sure to say and do the right things for Elian's sake in their visit with him. She urged empathy for the grandmothers' anxiety as they looked forward to the long-awaited visit in the context of a constant barrage of media, helicopter rides, shouting crowds and heavy police presence. She praised the grandmothers' strength, courage and articulate expression of their love for Elian and their desire to take him home with them.

Furthermore, Dr. Campbell, a devoted mother and grandmother herself, was the only person from the NCC to go with the grandmothers Wednesday afternoon into the house where they met with Elian. She said the grandmothers told her afterward that it felt like visiting a loved one in a hospital or prison – all of a sudden, it seems, "time's up" and you have to leave.

Editor's Note – A Word in Response to Some Frequently Asked Questions (FAQs)

1. Following the grandmothers' visit with Elian, Sister Jeanne expressed the opinion that Elian should remain with his Miami relatives. What is the NCC's view on her statement?

We are very appreciative of the extraordinary efforts that Sr. Jeanne undertook in offering her home as a safe, comfortable, inviting and neutral environment in which the grandmothers could spend a precious two hours of supervised visitation with their grandson Elian. She was a kind and gracious host. We were surprised when she chose to step out of her assigned role of neutrality. We would not have wanted her to publicly support our cause and assumed that she would not support the other side in this question. As an academic and head of a university we thought that her reflections would be based on research and not anecdotal information. It had been our hope that the kindness and generosity offered prior to and during the visit would have given her a helpful and significant role in the ongoing resolution of this issue. We regret that Sr. Jeanne, in choosing to state her opinion after exercising the role of neutral host so admirably, has in her action further fueled the fire of controversy and eliminated herself as a neutral facilitator in any future discussions on this matter.

2. Who paid the grandmothers' travel expenses?

During the NCC-hosted part of the grandmothers' visit, all but one flight was paid for by private donations. The Jan. 22 roundtrip flight (New York-Washington-New York) was paid for by the NCC at a cost comparable to commercial air tickets (\$3,100 for seven passengers). The grandmothers stayed in a private residence in New York City, as did the Rev. Oden Marichal, President of the Cuban Council of Churches, who accompanies them. The Cuban Interests Section took on responsibilities for the grandmothers' travel costs beginning with their return on Jan. 26 from Miami to Washington, D.C.

3. The NCC's work to facilitate the reunification of Elian Gonzalez with his father and grandparents in Cuba has received much publicity. How is the Council assisting other families who wish to be reunified?

The Council, its member communions and their congregations help to resettle thousands of uprooted people in U.S. communities every year. For example, in 1999, we assisted more than 6,700 newcomers representing more than 30 nationalities. In general, about 80 percent of these cases are ones in which families are reunified. We are concerned for all families everywhere who are separated by conflicts between governments. We pray for them and work for their reunification in many ways.

In recent years, our U.S. resettlement caseload has included approximately 2,000 Cubans annually. We are authorized to assist those Cubans who come to us through the U.S. Department of State Resettlement Program or the Department of Justice Cuban/Haitian Program. Decisions about who will be accepted for resettlement in the United States are made by the U.S. government, not by the NCC. Decisions about who will receive exit permits from Cuba are made by the Cuban government, not the NCC. Working within legitimate U.S. government programs, the Council makes great efforts to assist Cuban refugees and has done so for decades. No doubt there are people in the Cuban American community who oppose our stand on the Elian Gonzalez case who were themselves assisted by the Council.

While we must abide by the decisions of government in our resettlement work, we are advocates for a more humane U.S. immigration policy. As a U.S.-based organization, we participate in legislative discussions and public forums to carry the message of welcome and refugee protection to Congress and others.

Further, as a faith-based organization with global concerns, we cherish our relationships with Christian councils and other church bodies in more than 80 countries around the world, including Cuba. Because our unity in Christ is a tie that transcends geo-political boundaries, we and our church partners often find that we can build on church-to-church contacts even when our respective governments have differences. We pray that our work on the Elian Gonzalez case, which we undertook at the encouragement of the Cuban Council of Churches, might help to build such a bridge of good will. For many years we have been working for normalization of relationships between the U.S. and Cuba, which among other things, would ease the plight of the many Cuban families who are now separated.

-end-

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BUDGET AND FISCAL REVIEW
EDUCATION
ENVIRONMENTAL QUALITY
TRANSPORTATION

January 13, 2000

President Bill Clinton
White House
Washington DC

cc: Maria

Dear Mr. President,

I urge you to take a step towards rationality and humanity in our policy towards Cuba by supporting the return of Elian Gonzales to his father.

This is an entirely political crisis, pumping oxygen into the declining dream of the Cuban exile lobby to control U.S. policy and bring down their enemy in Havana. The 6 year old boy would be returned to his father in any other context but this.

The result of yielding to the Cuban exile lobby will be to dramatically worsen the chances of responsible rapprochement with the Cuban government, and will increase an anti-American hostility among millions of ordinary Cubans who already are angered by the permanent blockade. How can the United States care about a single Cuban boy, they will ask, when the United States denies food and medicine to millions of Cuban boys and girls on the island itself? Not only is keeping Elian Gonzales a hostage in Miami counter-productive because it alienates so many Cuban nationals, but it is a morally shameful policy for a superpower.

Sincerely,


Senator Tom Hayden

ALLIANCE FOR RESPONSIBLE CUBA POLICY

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MEMORANDUM

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United States House of Representatives
(1983-1992)
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President NAM (1980-1990)

Counsel:

Michael R. McLeod
McLeod, Watkinson & Miller

President:

Albert A. Fox, Jr.

To: The President of the United States
From: The Alliance for Responsible Cuba Policy
Subject: Elian Gonzalez/Cuba
Date: January 2, 2000

Mr. President, allow the bipartisan Board of the Alliance for Responsible Cuba Policy (ARCP) the liberty to address you in a memorandum rather than a formal letter. We chose this form of communicate because some of us know you and the urgency of the subject is better addressed informally.

ARCP was formed a little over one year ago to reestablish diplomatic relations with Cuba. We believed the time was long overdue for a "responsible debate" regarding United States/Cuba relations.

Mr. President, the facts in young Elian Gonzalez's case are clear. By holding on to this young boy, the United States is allowing the very foundation of our constitutional form of government to be shaken to its core. The United States is in violation of the bilateral agreements we have with Cuba regarding illegal immigration. In addition, all family experts agree, the relationship between a parent and a child supercedes the positions of governments and/or the political agenda of individuals. The longer the young boy remains in the United States while his father demands his return, the worse the situation will become.

One wonders how damaged young Elian's psyche will be since being wrapped in the American flag and used as a photo op. Those who shower him with lavish presents do not have his best interests at heart.

Accordingly, we respectfully recommend you arrange for a United States official to fly to Miami, pick up young Elian Gonzalez and return him to his father and extended family in his home town of Cardenas. You should return the little boy not necessarily discreetly, but without fanfare. In other words, no interest groups, no politicians, no media should accompany

ALLIANCE FOR
RESPONSIBLE
CUBA POLICY

Albert A. Fox, Jr.
President

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the official on the flight to Havana, with the possible exception of one of the boy's father's relatives with whom young Elian is presently residing.

Every single day, individuals from countries around the world seek to illegally enter the United States. Why? Because we are the world's greatest democracy with the greatest opportunities. For example, just last Wednesday, 30 illegal immigrants from China crossed the Pacific Ocean hidden in cargo containers and were arrested when they were found hiding after the boxes were unloaded. Among the 30 were seven women and two young boys, only a few years older than Elian. They presently are being detained to be processed and returned to China. Smugglers who are paid money orchestrated the trip from China to Long Beach, California – just as in Elian's case, smugglers orchestrated the trip from Cuba to Miami, Florida. What is the difference between the young boys from China and the young boy from Cuba?

Last Saturday 406 Haitians attempted the 600-mile voyage from their impoverished Caribbean homeland to Miami. Their unsafe and overcrowded 60-foot wooden vessel ran aground off Miami's Key Biscayne after trying to outrun a U.S. Coast Guard patrol boat. The vessel nearly capsized, which would have trapped a majority of the occupants below deck. They are being detained for processing to be sent back to Haiti. Among the group are several six-year-old boys. What is the difference between the young boys from Haiti and the young boy from Cuba?

The return of the young Gonzalez boy is the legal thing to do and the moral thing to do.

Finally, Mr. President, Friday night you said, during the Millennium celebration, that "we Americans do not fear change" Clearly, the United States must change its outdated, failed policy toward a small Caribbean island that, whether we like it or not, should be treated as the sovereign nation it is. We cannot overstate the significance your personal involvement and leadership would have in making certain young Elian Gonzalez is returned to where he rightfully belongs.

Your sage counsel is urgently needed before the situation worsens. As former Secretary of State Henry Kissinger said, "Competing pressures tempt one to believe that an issue deferred is a problem avoided: more often it is a crisis invited."



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FACT SHEET

Goal

The Alliance for Responsible Cuba Policy was created to re-establish United States trade relations with Cuba.

Strategic Issue

The trade embargo imposed on Cuba 38 years ago has failed to remove the Communist government of Cuba. With the Cold War over, there is no rational explanation to continue the embargo. We must deal with the Cuban government as it is, not how we wish it to be. A recent Pentagon report states Cuba is in no way a threat to the national security of the United States. The present policy is indefensible and inconsistent with America's values and self interests. The embargo merely continues to deny American citizens the ability to interact with the Cuban people and American companies the ability to compete in the Cuban market of eleven million consumers.

Membership

ARCP is incorporated in the District of Columbia as a 501(c)(6) nonprofit organization. A nonpartisan organization, ARCP's board is comprised of distinguished Americans. They include former United States Congressman Beryl Anthony of Arkansas, former United States Congressman Rod Chandler of Washington State, former United States Senator Dennis DeConcini of Arizona, the Honorable Barbara Hackman Franklin, former Secretary of Commerce under President George Bush, Ed Rabel, veteran CBS and NBS journalist, the Honorable Richard T. Schulze of Pennsylvania, and the Honorable Alexander B. Trowbridge, former Secretary of Commerce under President Lyndon Johnson and a past President of the National Association of Manufacturers.

Membership in ARCP is made up of selected United States corporations, associations, and individuals. All business sectors will be represented in ARCP including those involved in aviation, chemicals, consumer products, energy, food, machinery, pharmaceuticals, telecommunications and transportation.

ARCP members receive timely reports and information regarding current economic, political and social conditions in Cuba.

Funding

ARCP is funded by contributions.

December 1999						
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January 2000						
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24 Monday

- 7:15 AM Security
- 7:45 AM Comm Strat
- 8:00 AM Sr Staff
- 8:30 AM Budget Mtg
- 9:00 AM Deputies Mtg
ME's Office
- 9:35 AM Wellesley Students
Roosevelt Room
- 9:45 AM POTUS
- 10:20 AM POTUS Cong Prayer Brfst Ldrs
- 11:00 AM Vieques Call
7-2104 pin 2122
- 11:45 AM POTUS SOTU Prep (11:45-2:45p)
- 2:00 PM Msg Scheduling Mtg
Roosevelt Room
- 3:15 PM Box Mtg
Loretta, Katy, Kris, Karin, Tom/Josh
ME's Office
- 4:00 PM Mike Lyle/OA
ME's Office
- * 4:30 PM Elian Call
Miles, Joel W, Magana, Robert Raburn, Patty First, Alan Erenbaum/Sarah Taylor, James Costello, Susan Jacobs/State, Jim O'Brien/State, Mary DeRosa, Wendy Patten, Mara R, Maureen Shea, Irene
7-2104/1251
- * 4:30 PM SOTU speech call
- 5:00 PM SOTU travel call
72104 #3900
- 8:30 PM Dinner w/ Ludwigs
Citronelle
3000 M St NW
625-2150
Rita: 662-6982

JDP:
more worried
about how it will
look as a bit on the good
along with the good
secret interview - Clinton
prepare P/A

McMeiner
from state
Mary Lyle

COB Patten
B/Sic

Dodd Shale Jackson - Lee
will be mtr w/ grandmothers

DOJ - Costello, Brad Glass, Carol
Randy, Patty

State Wendy, Susan Jack

Miles (Dand - Sic)

Mack/Carroll
lawyers
get some

DOJ → Mack introduced w/ 6 senators
Lott has told Daschle no vote until
next week. ~~Have~~ Rules Committee
needed, but Dems are not pushing
but Dodd is delaying → McCain
There is no constitutional impediment to bill
Senator Reid - Liberia. No House vote

Propose residency US citizens
1) oppose on US terms abroad
2) fairly reunification

Communications: Dear Colleague → Robert Ray

3) Irene Baueno / N605

Total Pages: 6

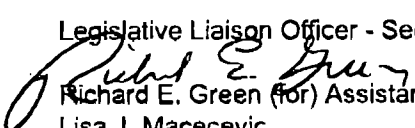
LRM ID: LJM72

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Thursday, January 27, 2000

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM:  Richard E. Green (for) Assistant Director for Legislative Reference

OMB CONTACT: Lisa J. Macecevic
E-Mail: Lisa_J_Macecevic@omb.eop.gov
PHONE: (202)395-1092 FAX: (202)395-3109

SUBJECT: STATE Report on Elian Gonzales

DEADLINE: Noon Friday, January 28, 2000

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: Please send any comments on the attached letter concerning Elian Gonzales by **NOON TOMORROW** so the letter may be transmitted to Congress TOMORROW.

Thank you.

DISTRIBUTION LIST**AGENCIES:**

61-JUSTICE - Robert Raben - (202) 514-2141

52-HEALTH & HUMAN SERVICES - Sondra S. Wallace - (202) 690-7760

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☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet

01/27/00

13:53

202 647 2782



Dear,

DRAFT

United States Department of State

Washington, D.C. 20520

I am writing to bring to your attention the implications for consular operations, and specifically the Department of State's ability to successfully pursue pending and future international parental child abduction cases, should Elián Gonzales Brotons not be returned to his father's custody and his place of habitual residence.

Earlier this week, I provided a declaration to the Department of Justice in support of the decision made by the Commissioner of the Immigration and Naturalization Service (INS), and ratified by the Attorney General, that Elián Gonzalez Brotons should be returned to his father in Cuba. I did so because the Department of State would expect a foreign government to make the same decision with respect to an American child in similar circumstances. The INS decision is consistent with the principles that the Department of State would seek to have followed in such cases. Failure to implement the INS decision could seriously prejudice the ability of the United States Government to help parents in the United States recover their children taken to foreign countries.

The State Department's Office of Children's Issues in the Bureau of Consular Affairs serves as the United States Central Authority under the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention"). It is responsible for cooperating with the Central Authorities in other countries to "secure the prompt return of children" to their place of habitual residence under the Hague Convention when they have been "wrongfully removed... or retained" by one parent, and to achieve the other objectives of the Hague Convention.

The role of consular officers in protecting children is recognized in the 1963 Vienna Convention on Consular Relations ("VCCR"), which largely codified customary international law and which now, with over 160 countries as parties, sets forth well-established and generally recognized principles. Article 5(h) of the VCCR specifically provides that consular functions include, "safeguarding . . . the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons."

The rights of parents are also recognized internationally and have long been a central premise of our work on behalf of Americans. It is a basic precept of our work that the parents of American citizen children, not the Department of State or the United States Government, should decide what is best for their children. As a general matter, the issuance of passports to and

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travel by minor U.S. citizen children is governed, under Department of State regulations and practice, by the wishes of their parents.

The United States is at the forefront in the provision of consular services to its citizens and in its advocacy on behalf of parents seeking the return of their children. Because other countries scrutinize our practices, our credibility and effectiveness depend upon our ability to adhere to the principles we espouse. If the United States fails to act in accordance with such principles, we jeopardize our ability to insist on adherence by other countries. Consistency between principles and practice is particularly important in matters of foreign relations, where enforcement of rights so often depends upon reciprocity, diplomatic pressure and negotiations, and cooperation. Over the years, hundreds of children have been returned to their parents in the United States because other countries have been willing to respect basic principles of international law and custom and, when applicable, relevant treaty obligations.

When a young child is found in a foreign country, the accepted international practice is to attempt to identify the child's parent or parent(s), and to return the child to that person whenever possible, often through the assistance of consular officials representing the child's country of origin. Were a U.S. citizen minor child found in a foreign country in the circumstances of Elián Gonzalez Brotons, we would expect the government of that country immediately to seek the child's surviving parent, if any, and to contact U.S. consular officials for assistance in doing so if necessary. We would then expect the government promptly to return the child to the parent, unless the parent expressly asked that other arrangements be made. We would ensure that the foreign government was aware of the parent's wishes and would not expect our representations in that regard to be questioned. We would not expect the surviving parent to have to participate in a foreign court's custody proceedings to establish his or her right to assume responsibility for the child. We would object strongly if a foreign government declined to return an American child to its only surviving parent because other relatives sought custody of the child or because of a judgment that the child would be better off in the country in which the child was found. We also would take vigorous exception to a foreign government or court that sought to substitute its view of the "best interests of the child" for those expressed by a parent, absent a previous finding that the parent was unfit.

Many countries of the world, like Cuba, are not party to the Hague Convention on the Civil Aspects of International Child Abduction. When children are taken from the United States by one parent to such a "non-Hague country," the Department of State typically seeks the cooperation of officials of that country in securing the return of the child to the parent left behind in the

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United States. If the INS decision is not upheld, our ability to make such requests successfully in the future will surely be impaired. First, such requests appeal to the foreign country involved to respect the rights of the left-behind parent and the importance of the parent-child relationship; the ability of the United States to appeal to these considerations with credibility will be diminished. Second, foreign authorities will have to consider the possibility that their own countrymen will remember our failure to return Elian to his father and react negatively if such authorities return a child to a left-behind parent in the United States.

A failure to enforce the INS decision would also be inconsistent with the principles we advocate and could have potentially lasting negative implications for left-behind parents in the United States and for U.S. citizen children taken to foreign countries. Not returning Elian to his father would be perceived as a decision that the fundamental parent-child relationship can be ignored, even where there is no evidence of unfitness. A decision based on the "independent" views of a six-year-old child would also be a dangerous precedent. Finally, not returning Elian to his father could be perceived as endorsing the right of the country in which a child is found to refuse to return the child to his habitual residence based on a judgment that the habitual residence is not a desirable place to raise a child. A decision not to return Elian Gonzalez Brotons to Cuba could encourage the making of such arguments by abducting parents and their acceptance by foreign authorities.

I hope this information will be of use to you. Please do not hesitate to contact me if there is any further information that I can provide to you.

Sincerely,

Mary A. Ryan

Assistant Secretary for Consular Affairs

Elean Gougeles

LUIS E. AGUILAR-LEÓN
PROFESSOR EMERITUS - GEORGETOWN UNIVERSITY
435 GLENRIDGE ROAD
KEY BISCAYNE, FL 33149

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Maria Echaveste	Luis E. Aguilar-León
COMPANY:	DATE:
The White House	01/08/00
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
1-202-456-1907	3
PHONE NUMBER:	
1-202-456-6594	
RE:	

Open letter to the President

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

This letter will appear as my column in El Nuevo Herald, Sunday, January 9, and The Miami Herald later this week.

LUIS AGUILAR LEÓN

435 GLENRIDGE ROAD
KEY BISCAYNE, FLORIDA 33149
TELEPHONE: (305) 365-9543
FAX: (305) 365-1070

January 8, 2000

Dear Mr. President,

I have always appreciated the memory of the two occasions in which you graciously took me aside; in Washington to reminisce about our Georgetown University classes, later in Miami to talk about Cuba. On the second occasion, the Cuban regime had just shot down three defenseless aircraft, and it looked like U.S. policy toward Castro would harden. I'll never forget your first question. "Professor, do you believe I'm doing the right thing to topple that S.O.B.?" I replied, "Mr. President, you're doing the right thing. But the right thing won't topple that S.O.B." You ended by giving me a private White House postal address where I could write with any praise or criticism of your policies.

I have never used that privilege. If I write you publicly now, sir, it's because of a grievous public error your Administration has made, which you still have time to make right. That error, Mr. President, is forcing the return of Elian Gonzalez to Cuba.

Such a wrong decision comes from a misconception, which reduced Elian's case to a simple custody fight between his father in Cuba and family in Miami. If this were so, I assure you very few Cubans would argue for his remaining in the U.S. None wish to keep the boy apart from his father, as has been alleged. Indeed, Miami Cubans would welcome Juan Miguel Gonzalez here with open arms.

Polls suggest Americans are evenly split on the INS decision, with half supporting a father's right to be with his son. Most of those don't know tyranny, or a place where the wrong opinion could be fatal. They don't take polls in Cuba.

As you well know, for 41 years, only one man has ruled in Cuba. That man was once called "the father of all Cubans" by his brother, Raul Castro. It's a harsh father who decides which of his children can leave Cuba, which will go to prison for criticizing their home, or which will be shot for becoming too popular. That man is now using a mother's ultimate sacrifice – trying to spare her child the Cuban tragedy – to condemn the "infamous genocidal" United States. That "crusader for a child's rights", with a mere snap of his fingers, closed his country's schools for three days, and sent thousands of children to protest for the return of a boy whose name they had to memorize.

Elian's father has no voice of his own. He must obey without the hint of criticism the whims of his master, Fidel Castro. Already, the regime's spokespersons are calling

LUIS AGUILAR LEÓN

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Elían, age six, a socialist hero. More than his closely watched fellow children, he will be educated and punished in order to remain a socialist hero..

With all due respect, Mr. President, downplaying the totalitarian fist still crushing the life out of Cuba, and conceding power to a father without power or freedom not only go against our country's noble democratic tradition, they render meaningless a mother's death. You've read Euripides, sir. You may recall Hecuba's anguish when she and her daughter were enslaved by their enemy:

Oh no no!

To be given as slave to serve the vile, that slippery man,

Right's enemy, brute, murderous beast,

The mouth of lies and treachery, that makes void faith in things promised.

I am gone, doomed, undone.

Such a fate awaits Elían. You can spare him from it, Mr. President. It's the right thing to do to topple that S.O.B.

Sincerely,



Luis E. Aguilar-León